Supreme Court, U.S.
FILED

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No.

In the

Supreme Court of the United States

WILLIAM J. CRISLER, JR. and DEGAULLE MANOR, LTD.,

Petitioners,

v.

KATHY BROWNE, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE LOUISIANA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioners William J. Crisler, Jr. and DeGaulle Manor, Ltd. were cast in judgment for over $2 million each in a Louisiana state court tort action. Louisiana law required each petitioner to post a bond in the amount of his judgment liability plus interest in order to stay enforcement of the judgment pending his appeal to the Louisiana Court of Appeal. Neither Crisler nor DeGaulle has the financial means to obtain a bond in that amount, and they have accordingly sought relief from this requirement.

Following denials of relief by the Louisiana district court and court of appeal, the Louisiana Supreme Court refused to stay enforcement of the judgment against Crisler and DeGaulle pending their appeal. The question presented is whether the Equal Protection and Due Process clauses of the Fourteenth Amendment preclude a state from arbitrarily denying a request for stay of a judgment pending appeal when the appellant is otherwise unable to post a bond equal to no less than the amount of the judgment plus interest.

BEST AVAILABLE COPY

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The petitioners are William J. Crisler, Jr., a Mississippi resident, and DeGaulle Manor, Ltd., a Mississippi limited partnership, both defendants in the Louisiana state court action. The respondents are Kathy Browne, Tara Mosley, and Rydell Bienaime, all plaintiffs in the Louisiana state court action. Zurich American Insurance Company and KONE, Inc. were both defendants in the Louisiana proceedings, but neither Zurich nor KONE is before this Court.

Petitioner DeGaulle Manor, Ltd., has no parent companies or subsidiaries (except wholly-owned). In the interest of full disclosure, however, DeGaulle Manor, L.L.C., a Mississippi limited liability company of which William J. Crisler is a member, is the general partner of DeGaulle Manor, Ltd.

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PETITION FOR A WRIT OF CERTIORARI

William J. Crisler, Jr. and DeGaulle Manor, Ltd. respectfully petition for a writ of certiorari to review the decision of the Louisiana Supreme Court in this case and impose a stay on enforcement of the civil money judgment pending petitioners' appeal on the merits in the Louisiana appellate court.

OPINIONS BELOW

The decision of the Louisiana Supreme Court (App. 3a) denying writs and affirming the district court is unreported. The decision of the Louisiana Fourth Circuit Court of Appeal (App. 8a) denying writs and affirming the district court is unreported. The decision of the Civil District Court for the Parish of Orleans (App. 12a-13a) denying petitioners' motion to stay enforcement of the judgment is unreported.

JURISDICTION

On July 16, 2002, the Louisiana Supreme Court denied petitioners' application for supervisory and/or remedial writs. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property, without due process of law".[1] The Equal Protection Clause of the Fourteenth Amendment provides that no state shall "deny to any

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[1] U.S. Const., Amendment XIV, § 1.

person within its jurisdiction the equal protection of the laws."[2]

The Louisiana statute dealing with the security required for a suspensive appeal[3] provides in pertinent part as follows:

> B. The security to be furnished for a suspensive appeal is determined in accordance with the following rules:
>
> (1) When the judgment is for a sum of money, the amount of security shall be equal to the amount of the judgment, including the interest allowed by the judgment to the date the security is furnished, exclusive of the costs.[4]

STATEMENT OF THE CASE

1. Introduction

This matter arises out of the death of one boy and injury to another at the Live Oak Apartments, a high-rise apartment building in New Orleans, Louisiana. Not surprisingly, suit in tort followed this tragic occurrence. The instant petition is based not on the outcome of that tort suit but rather on the Louisiana courts' post-judgment refusal to address a fundamental inequity in the application of the Louisiana appeal-bond

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[2] U.S. Const., Amendment XIV, § 1.

[3] A "suspensive appeal" is one that "suspends the effect or execution of an appealable order or judgment". La. Code Civ. P. art. 2123(A).

[4] La. Code Civ. P. art. 2124(B)(1).

requirement. The application of the requirement in this case has led the Louisiana courts to conclude that Crisler and DeGaulle must post appeal bonds that are three times in excess of their available insurance coverage, and exceed by an even greater factor their available assets, if they wish to forestall bankruptcy while pursuing an appeal. In light of this Court's order in *Modjeski & Masters v. Carter*,[5] so onerous a security requirement violates petitioners' constitutional rights under the Due Process and Equal Protection clauses of the Fourteenth Amendment.

2. The Facts And Proceedings At Trial

With the curiosity characteristic of young boys, Ron Brown, age 13, and Kevin Mosley, age 11, broke into an elevator shaft at the Live Oak Apartments in October 1999. As one stood on the other's shoulders, they opened the hoistway doors by jimmying the safety lock atop the outer doors and climbed down onto the top of the elevator cab. Sadly, once inside, they lost their footing and fell down the elevator shaft.

The owner of the Live Oak Apartments at the time of the accident was DeGaulle Manor, Ltd., a Mississippi Limited Partnership. The general partner of DeGaulle Manor, Ltd. at that time was DeGaulle Manor, L.L.C., a Mississippi Limited Liability Company of which William J. Crisler, Jr. is a member. Crisler is a Mississippi small businessman with no substantial assets and a negative net worth who now faces certain bankruptcy and financial ruin as a result of alleged acts or omissions in the course of his role as a member of DeGaulle Manor, L.L.C.

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[5] 485 U. S. 1031 (1988).

Tara Mosley and Kathy Browne, the boys' mothers, filed suit against DeGaulle, as owner of the property; Crisler individually; and KONE, Inc., the company obligated since 1995 to maintain the elevators. Rydell Bienaime, Mosley's father, who had never contributed to his son's welfare and was in fact incarcerated at the time of the accident, brought suit against the same defendants. After trial, the jury rendered a verdict in favor of respondents and against Crisler and DeGaulle for $2,275,500.00 and $2,200,000.00, respectively, plus interest.[6] Zurich American Insurance Company, their liability carrier, was cast in judgment with them for its policy limits of $1 million, plus interest, leaving Crisler and DeGaulle exposed to excess judgment liability of over $2 million each, far in excess of either party's assets. KONE was found not liable. Final judgment was entered on May 23, 2002.

3. The Louisiana Supersedeas Bond Requirement

Crisler and DeGaulle timely sought an appeal of the judgment against them. Louisiana law provides for two types of appeals: (1) a "suspensive appeal," in which the appellant posts a bond equal to at least the amount of the judgment plus interest;[7] and (2) a "devolutive appeal," in which the appellant neither posts a bond nor obtains a stay of the judgment.[8] Respondents moved for a suspensive appeal and moved to limit the security required under Louisiana Code of Civil Procedure Article 2124B(1) to $1,227,752.00, the amount of Zurich's judgment liability plus interest, on the ground that neither Crisler nor DeGaulle had sufficient assets to

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[6] With interest, the amount of the judgment against Crisler and DeGaulle rose to $3,055,034.00 and $2,981,399.00, respectively.

[7] La. Code Civ. Procedure Art. 2123(A).

[8] La. Code Civ. Procedure Art. 2087(A).

post any additional security.[9] Alternatively, Crisler and DeGaulle moved for an order staying or enjoining enforcement of the judgment as to Crisler and DeGaulle pending their appeal.

On July 1, 2002, the Civil District Court for the Parish of Orleans granted all three defendants a suspensive appeal, but denied the motion to limit security.[10] On July 3, 2002, Crisler and DeGaulle filed a notice of intent to seek supervisory writs with the Louisiana Fourth Circuit Court of Appeal. On July 3, 2002, the Louisiana Fourth Circuit Court of Appeal entered an order temporarily staying the matter until July 8, 2002.[11] On July 9, 2002, the court of appeal denied petitioners' application for supervisory review, vacated its earlier stay, and directed petitioners to post security in the district court for the full amount of the judgment no later than 11:15 a.m. on July 10, 2002.[12]

On July 10, 2002, the Louisiana Supreme Court entered a stay pending further consideration of this matter.[13] On July 16, 2002, the Louisiana Supreme Court recalled that stay, denied the application for supervisory and/or remedial writs, and ordered petitioners to post security in the amount ordered by the trial court within forty-eight hours. [14] Justice Jeanette T. Knoll dissented from the denial of petitioners' application, citing precedent from this Court:

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9 Under Louisiana Law, Zurich is required to post security only for the amount of its policy limits. See *Bowen v. GEICO*, 451 So.2d 1196 (La. App. 5th Cir. 1984).

10 App. 12a-13a.

11 App. 11a.

12 App. 8a-9a.

13 App. 5a-6a.

14 App. 3a-4a.

> Knoll, J., concurs in the result but would grant the writ and remand to the Court of Appeal. C.C.P. art. 2124 (C) requires the Court of Appeal to independently review the amount of security. Without an evaluation of factors such as the defendants' net worth, the Court of Appeal abused its discretion by not ascertaining whether the amount of security in this case precludes the defendants from their opportunity for a meaningful appeal. See *Modjeski & Masters v. Carter*, 485 U.S. 1031 (1988). If the defendants' net worth were to prove less than the amount of the security ordered by the trial court, their inability to post security would be tantamount to an arbitrary denial of their access to the courts, violating their right to due process. Therefore, I would immediately remand to the Court of Appeal for such determination.

Petitioners immediately requested an additional ten days to post security or, in the alternative, seek a stay from this Court. At 4:35p.m. on July 17, 2002, the Louisiana Supreme Court denied that requested by a 5-2 vote.[15]

Petitioners subsequently sought an emergency stay and/or injunction from this Court through an application to Justice Antonin Scalia under Supreme Court Rule 22. On July 26, 2002, Justice Scalia denied petitioners' application for expedited and/or emergency relief.

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15 App. 1a-2a.

In addition to seeking formal relief through the courts, petitioners have sought relief from respondents. First, Crisler presented respondents with an affidavit and financial statement detailing his lack of any significant assets. Second, Crisler offered himself for a post-trial deposition that allowed respondents to explore in great detail his and his family's assets. This deposition provided further support for the impecunious condition established in Crisler's affidavit, and made it clear to respondents that the judgment in this matter cannot be fully satisfied in any event. Despite the fact that Crisler obviously lacks funds sufficient to satisfy the judgment and will be forced into bankruptcy if enforcement of the judgment is sought, respondents have refused to give petitioners any assurance that they will refrain from enforcing the judgment pending the appeal. Accordingly, petitioners have no other recourse than to seek a review by this Court.

As shown below, the Louisiana Supreme Court's refusal to stay the posting of petitioners' appeal bond raises a significant question of federal constitutional law: the extent to which the states may deny a request for stay of a judgment pending appeal based on the inability of the appellant to post a bond equal to no less than the amount of the judgment plus interest. At present, at least 10 states impose such a statutory requirement. The constitutionality and propriety of Louisiana's appeal bond requirement was directly addressed by this Court in *Modjeski & Masters v. Carter*. Following the entry of a preliminary stay by Justice White, this Court concluded that the Louisiana appeal bond requirement may not be blindly applied in cases in which the appellant can provide some security but is unable to obtain security in the full amount of the judgment against him.

REASONS FOR GRANTING THE WRIT

1. The Application Of The Louisiana Supersedeas Bond Requirement In This Case Is Neither Rational Nor Related To Any Government Interest.

The refusal of the Louisiana courts to stay execution of the judgment based solely on petitioners' inability to post a bond far in excess of their respective net worth raises a significant constitutional question: Is it permissible under the Due Process and Equal Protection clauses for a state automatically to refuse to stay execution pending appeal based solely on the appellant's inability to post a supersedeas bond in the full amount of the judgment against him? That this is an important question is shown by the fact that no fewer than 10 states have statutes making the posting of a bond at least equal to the judgment plus interest a prerequisite to obtaining a stay pending appeal.[16]

The Louisiana supersedeas bond requirement as strictly applied in this case asks petitioners to do the impossible: obtain security for assets they do not possess. It is undisputed that the judgment liability of Crisler and DeGaulle – which collectively exceeds $5 million – far exceeds what assets petitioners possess for satisfaction of the judgment against them. Petitioners recognize the legitimate state interest in preserving a judgment debtor's property in the event that the appeal is unsuccessful.[17] However, respondents here will never

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[16] AL R RCP Rule 62(d); Ala. R. App. P. 8(a); Del.C.Ann.Const., Art. 4, § 24; DE Sup. Ct. Rules, Rule 32(c); Mn St. RCP Rule 62.03; Neb. Rev. St. § 25-1916(1); NY CPLR § 5519(a); OR R. RCP 72(a); Va. Code Ann. § 8.01-676.1(a) & (c).

[17] *Lindsey v. Normet*, 405 U.S. 56, 77 (1972) ("a State may

be able to fully satisfy their judgment in this case, given the vast discrepancy between the amount of the judgment and the judgment debtors' available assets and insurance coverage. As this Court has previously acknowledged, there is no rational interest in requiring a judgment debtor to obtain security where there are insufficient funds to satisfy the judgment in any event.

In *Modjeski & Masters v. Carter*,[18] this Court recognized that, as a matter of federal constitutional law, some measure of discretion inheres in the appeal bond requirement. The *Modjeski & Masters* Court fashioned the only reasonable remedy available when faced with an appeal bond requirement that, for no rational reason, forces an appellant into bankruptcy or extinction during the pendency of his appeal: it allowed the appellant to post a bond in the amount of its net worth. This remedy strikes the appropriate balance between the seemingly irreconcilable interests of the judgment debtor and judgment creditor by securing the assets actually available for satisfaction of the judgment. No amount of security can preserve for enforcement of a judgment assets that do not exist.

Like the present matter, *Modjeski & Masters*[19] originated in the Civil District Court for the Parish of Orleans and eventually made its way to this Court. *Modjeski & Masters* involved a money judgment rendered in the Civil District Court against an engineering firm that provided consulting services in connection with the Greater New Orleans Bridge over the Mississippi River. The firm, Modjeski & Masters,

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properly take steps to insure that an appellant post adequate security before an appeal . . . to guard a damage award already made").

[18] 485 U. S. 1031 (1988).

[19] *Id.*

had a net worth of approximately $700,000.00, but had been cast in judgment for approximately $14 million, including interest. Like Crisler and DeGaulle here, Modjeski & Masters sought but was unable to obtain a suspensive appeal bond for the full amount of the judgment against it, based on the discrepancy between the firm's net worth and the amount of the judgment.

Modjeski & Masters petitioned the district court for an order eliminating the suspensive appeal bond requirement, or, in the alternative, for an injunction, urging that the enforcement of the bond requirement would force the firm into bankruptcy and cause irreparable harm. The district court found that argument persuasive, but felt constrained to deny relief from the full bond requirement because of the mandatory nature of Article 2124. Modjeski & Masters filed writs to both Louisiana Fourth Circuit and the Louisiana Supreme Court, but both courts denied relief.

Modjeski & Masters then sought and obtained a temporary stay from Justice White. This Court then granted Modjeski & Masters' request for a permanent stay, and directed the Louisiana courts to allow Modjeski & Masters to suspend execution of the judgment against it by posting a bond for the firm's full net worth. The rationale behind the ruling was simple: A final judgment merely gives the judgment creditor the right (absent reversal of the judgment on appeal) to satisfy the judgment out of the judgment debtor's net worth – not the right to collect the full judgment regardless of the assets available to satisfy it. No bond requirement can preserve assets that a judgment debtor does not have. And no surety, recognizing that he will be called upon to satisfy the judgment if affirmed on appeal, will issue a bond securing the judgment liability

of a bankrupt judgment debtor.[20]

The rationale underlying *Modjeski & Masters* is equally applicable to the instant matter. Though they face judgment liability in excess of $5 million, neither Crisler nor DeGaulle possess sufficient assets to satisfy the judgment. Neither Crisler nor DeGaulle is able to obtain a suspensive appeal bond. Crisler is not willfully refusing to pay the judgment against him; he simply cannot obtain security for assets that he does not have. Requiring Crisler or DeGaulle to either furnish security in the full amount of the judgment or else appeal devolutively is no less than a requirement that they bankrupt themselves while pursuing their constitutional right to appeal the judgment against them.

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[20] Article 2124(E) requires that the suspensive appeal bond provide "in substance, that it is furnished as security that the appellant will prosecute his appeal, that any judgment will be paid or otherwise satisfied from the proceeds of the sale of his property, or that otherwise the surety is liable for the amount of the judgment." All sureties in Louisiana, even commercial sureties on appeal bonds, have a right of reimbursement and the right to require security from the principal. See Louisiana Civil Code Articles 3047, 3049 and 3053.

2. The Irrational And Unjustified Impairment Of Petitioners' Right To Appeal Violates The Due Process And Equal Protection Clauses Because It Is Irrational.

It is established law that the states need not provide for appeals in the first place.[21] If they do provide a right of appeal, however, they cannot arbitrarily exclude certain parties from exercising that right;[22] nor may they capriciously or arbitrarily grant the right to some litigants and deny it to others without violating the Equal Protection Clause.[23] For these reasons, where a state has erected financial barriers effectively denying the defendant "a fair opportunity" to appeal and rendering his right to appeal "a meaningless ritual," this Court has struck down those barriers as arbitrary, in violation of the Fourteenth Amendment.[24] The strict application of the Louisiana bond requirement in this case effectively renders petitioners' appeal a meaningless ritual.

In *Lindsey v. Normet*,[25] this Court recognized that the burden placed by an appellate bond requirement on the statutory right to appeal must be somehow rationally related to the state's interest in preserving the property at issue. That is, in the case of a money judgment such as the one entered below, it is rational and legitimate for the state "to guard a money award already made".[26] The state's rational interest in

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21 *Lindsey v. Normet*, 405 U.S. 56, 77 (1972).

22 *Evitts v. Lucey*, 469 U.S. 387, 405 (1985).

23 *Lindsey*, 405 U. S. at 77.

24 *Evitts*, 469 U.S. at 394, 405. *See Lindsey*, 405 U.S. at 77; *Williams v. Oklahoma City*, 395 U.S. 458, 460 (1969); *Douglas v. California*, 372 U.S. 353, 356-58 (1963); *Burns v. Ohio*, 360 U.S. 252, 257-258 (1959); *Griffin v. Illinois*, 351 U.S. 12, 17-18 (1956).

25 405 U.S. 56 (1972).

26 *Id.* at 77.

preserving a judgment debtor's assets is inapplicable here, for no bond requirement will preserve for satisfaction of the judgment assets that Crisler and DeGaulle have never possessed.

The Louisiana provision, Code of Civil Procedure Article 2124, actually makes some allowance for judicial discretion, but does not specifically grant the trial court discretion in all cases. Article 2124 underwent a major revision by the Louisiana Legislature in 2001, and now specifically provides discretion on the part of the trial judge to lower security requirements when the money judgment exceeds $150 million. Subparagraph (B)(1)(a) specifically states that, "where the amount of the judgment exceeds $150 million, the trial court, upon motion and after hearing, may, in the exercise of its broad discretion, fix the security in an amount sufficient to protect the rights of the judgment creditor while at the same time preserving the favored status of appeals in Louisiana." Paragraph D of the Article also gives a trial court discretion to increase security "for good cause," further statutory authority for judicial discretion.

Moreover, Paragraph C specifically allows for review of an onerous supersedeas bond by the intermediate appellate court when "the party seeking to appeal from a judgment for a sum of money is aggrieved by the amount of the security fixed by the trial court".[27] These provisions in the bond statute evidence express legislative recognition of judicial discretion to balance the rights of judgment creditors and judgment debtors

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[27] La. Code Civ. P. art. 2124(C). As Justice Knoll of the Louisiana Supreme Court observed in her dissent, there is no evidence that the Louisiana appellate court conducted any independent evaluation of the amount of security fixed by the trial court in this case.

by fashioning an appropriate amount of security according to the needs of a particular case.

Louisiana's bond provision, as applied to the petitioners, imposes a clear financial barrier to appeal on these facts and, as such, cannot be expected to withstand this Court's constitutional scrutiny. As explained above, the only way for petitioners to obtain a stay of execution pending appeal under Louisiana law is for them to post a bond equal to the amount of the judgment plus interest. This they cannot do. For this reason, petitioners may be forced into a bankruptcy from which they may not emerge. They may never have meaningful review of this civil death sentence, a review available under Louisiana law for those with sufficient resources to post suspensive appeal bonds.

Nor is there any reason for refusing to stay judgments against those in petitioners' position. If respondents were permitted to enforce their judgment against petitioners, the most that they could hope to recover would be the value of the Zurich policy, which has already been posted as security. Requiring a bond of over $6 million surely has little to do with protecting respondents' position. The most that could rationally be required would be a bond equal to petitioners' net worth, which, in Mr. Crisler's case, would be a negative amount.

3. Denial Of A Stay Of Enforcement Of The Judgment Would Cause Irreparable Injury to Petitioners By Exposing Them To Bankruptcy During The Pendency Of Their Appeal.

Petitioners will be irreparably injured unless this Court grants a writ of certiorari to prevent immediate enforcement of the judgment against them. Respondents have already begun proceedings designed to allow execution of the Louisiana judgment in Crisler's home state of Mississippi. The outstanding judgment and interest so far exceed the amount of existing assets and insurance coverage that immediate enforcement will certainly mean bankruptcy for Crisler and extinction for DeGaulle.

Although irreparable, this financial ruin might not be so troubling were it inevitable. But it is far from certain that petitioners would be forced into bankruptcy were the proceedings in the Louisiana appellate courts allowed to run their full course. Respondents are essentially seeking to force Crisler to bankrupt himself while appealing a judgment that will likely not withstand review on appeal.

William Crisler did not own the Live Oak Apartments, nor did he "own" DeGaulle Manor, Ltd. At no time pertinent to this action was Crisler a partner in DeGaulle Manor, Ltd. Rather, the general partner of DeGaulle Manor, Ltd. was DeGaulle Manor, L.L.C. Crisler, in turn, was a member of DeGaulle Manor, L.L.C. Both DeGaulle entities, the limited partnership and the limited liability company, were duly-organized and constituted under the laws of the State of Mississippi. Crisler's status, as merely a member of the limited liability company that was a partner in the limited

partnership, was clearly established at trial and unrefuted.

That Crisler cannot be held liable in his capacity as a member of the limited liability company is clear regardless of whether Louisiana or Mississippi law applies to the question. Under Louisiana law, "no member, manager, employee or agent of a limited liability company is liable in such capacity for a debt, obligation, or liability of the limited liability company."[28] Moreover, except in the case of a dispute between the limited liability company and one of its members, "a member, manager, employee, or agent of a limited liability company is not a proper party to a proceeding by or against a limited liability company[.]"[29]

Mississippi law is equally clear on the question, explicitly providing that "a member of a limited liability company is not liable by reason of being a member, under a judgment, decree or order of a court . . . for a debt, obligation, or liability of the limited liability company . . . whether arising in . . . tort or otherwise."[30] And, as in Louisiana, "[a] member of a limited liability company is not a proper party to a proceeding by or against a limited liability company, by reason of being a member of the limited liability company[.]"[31]

In addition to the logical and jurisprudential deficiencies in the judgment rendered below as it applies to Crisler personally, the judgment is further incorrect as a matter of law in that it effectively resurrects strict premises liability, a species of liability without fault that is all but extinct in Louisiana.

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[28] La.R.S. 12:1320 (B).

[29] *Id.*

[30] Miss. Code § 79-29-305(1).

[31] Miss. Code § 79-29-305(2).

Moreover, in applying the attractive nuisance doctrine to this case involving injury to an 11-year-old and a 13-year-old, the decision below contravenes recent and relevant Louisiana Supreme Court precedent indicating that the doctrine only applies to children under 10-years-old.[32]

On the other hand, staying enforcement of the judgment pending appeal will not prejudice respondents' position. Respondents have already been offered the full amount of the Zurich policy in settlement of this matter. If respondents were permitted to enforce their judgment tomorrow, the most that they could possibly hope to obtain would be the amount of the Zurich policy, plus whatever minor amounts they might eventually obtain from Crisler's and DeGaulle's bankruptcy proceedings. Indeed, it appears that the only benefit to respondents' apparent plan to initiate immediate enforcement of the judgment against Crisler and DeGaulle, knowing that it cannot lead to collection of any significant amount over the amount of the Zurich policy, would be avoidance of an appellate ruling eliminating the judgment altogether or reducing it to less than the amount of the Zurich policy.

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[32] *Racine v. Moon's Towing, Inc.*, 01-2837 (La. 5/14/02), 817 So.2d 21.

CONCLUSION

Therefore, petitioners William J. Crisler, Jr. and DeGaulle Manor, Ltd. respectfully pray that this Court grant their Petition for a Writ of Certiorari to the Louisiana Supreme Court and stay enforcement of the Judgment of the Civil District Court for the Parish of Orleans pending petitioners' appeal of the judgment on the merits.

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July 17, 2002

Joseph L. McReynolds, Esq.
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In Re: Browne, Kathy etal vs. DeGualle Manor Ltd. etal
No: 2002-CC-1883 Dear Counsel:

This is to advise that the Court took the following action on the Motion For Extension of Time to Post Appeal Bond and File Application to the U.S. Supreme Court in the above entitled matter:

"Motion denied."
Knoll, J., would grant the motion, I find defendant's request for a ten day extension of time to post an appeal bond and/or file a writ with the U.S. Supreme Court reasonable and, therefore, would grant defendant's motion under the circumstances of this case."
Weimer, J., would grant the motion.

With kindest regards, I remain,

Very truly yours,

John Tarlton Olivier
Clerk of Court

By: Katherine A. Fontana
Deputy Clerk of Court

KAF: vrc
ccs: All Counsel

Court of Appeal, Fourth Circuit, Number 2002-C-1306

The Supreme Court of the State of Louisiana

NO. 2002-CC-1883

KATHY BROWNE, ET AL.

vs.

DEGUALLE NANOR, LTD., ET AL.

IN RE: DeGualle Manor Ltd. etal; Crisler, William J. Jr., Defendant(s); Applying for Supervisory and/or Remedial Writs, Parish of Orleans, Civil District Court Div. A, Nos. 99-18552, 99-19006, 99-19398; to the Court of Appeal, Fourth Circuit, No. 2002-C-1306

July 16, 2002

Stay recalled; Writ denied. We find no error in the trial court's application of La. Code Civ. P. art 2124. Relators are granted 48 hours from the issuance of this order to post the requisite suspensive appeal bonds, should they choose to seek a suspensive appeal.

JLW

PFC

CDK

BJJ

JPV

CDT

KNOLL, J., dissents with reasons. I would grant the writ and remand this matter to the court of appeal. LSA-C.C.P. art. 2124(C) requires the court of appeal to independently review the amount of security. Without an evaluation of factors such as the defendants' net worth, the court of appeal abused its discretion by not ascertaining whether the amount of security in this case precludes the defendants from their opportunity for a meaningful appeal. See Modjeski & Masters v. Carter, 485 U.S. 1031 (1988). It the defendants' net worth were to prove less than the amount of security ordered by the trial court, their inability to post security would be tantamount to an arbitrary denial of their access to the courts, violating their right to due process. Therefore, I would remand this matter to the court of appeal for such determination

Supreme Court of Louisiana
July15, 2002

Deputy Clerk of Court
For the Court

SUPREME COURT
STATE OF LOUISIANA
NEW ORLEANS

PASCAL F. CALOGERO, JR.
CHIEF JUSTICE

JOHN TARLTON OLIVIER
CLERK OF COURT

301 LOYGLA AVENUE
NEW ORLEANS, LA
70112

TELEPHONE (504) 568-5707
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July 10, 2002

Hon. Carolyn W. Gill-Jefferson
Parish of Orleans
Judge, Civil District Court
Division A.
421 Loyola Ave.
New Orleans, LA 70112

In Re: Browne, Kathy etal vs. DeGualle Manor Ltd. etal
No: 2002-CC-1883

Dear Judge Gill-Jefferson:

This is to advise that the Court took the following action with regards to the above entitled matter:

"All proceedings stayed pending further orders of the Court."

Knoll, J., concurs in the result but would grant writ and remand to Court of Appeal. C.C.P. art. 2124 (C) requires the Court of Appeal to independently review the amount

of security. Without an evaluation of factors such as the defendants' net worth, the Court of Appeal abused its discretion by not ascertaining whether the amount of security in this ease precludes the defendants from their opportunity for a meaningful appeal. See Modjeski & Masters v. Carter, 485 U.S. 1031 (1988). If the defendants' net worth were to prove less than the amount of security ordered by the trial court, their inability to post security would be tantamount to an arbitrary denial of their access to the courts, violating their right to due process. Therefore, I would immediately remand to the Court of Appeal for such determination.

With kindest regards, I remain,

Very truly yours,

John Tarlton Olivier
Clerk of Court

By: Katherine A. Fontana Deputy Clerk of Court

KAF: rtd

ccs: Thomas L. Gaudry Esq.
Gregory Carl Weiss Esq.
Terese M. Bennett Esq.
Tamara Kluger Jacobson Esq.
Joseph Edward Lee III Esq
Robert Emmett Kerrigan Jr. Esq.
Marc D. Winsberg Esq.
Eugene P. Redmann Esq.
Thomas William Darling Esq.
Joseph L. McReynolds Esq.
Court of Appeal. Fourth Circuit, Number 2002-C-1306
Civil District Court Div. "A" Number 99-18552

Civil District Court Div. "A" Number 99-19006
Civil District Court Div. “A” Number 99-19398

NO. 2002-C-1306

COURT OF APPEAL, FOURTH CIRCUIT
STATE OF LOUISIANA

KATHY BROWNE, ET AL.

VERSUS

DEGUALLE MANOR, LTD., ET AL.

IN RE: DEGAULLE MANOR, LTD. AND WILLIAM J. CRISLER, JR.

APPLYING FOR: SUPERVISORY WRITS

DIRECTED TO: HONORABLE CAROLYN GILL-JEFFERSON, JUDGE CIVIL DISTRICT COURT, ORLEANS PARISH DIVISION "A", 99-18552

SUPERVISORY WRIT DENIED; STAY VACATED.

On the showing made, we decline to exercise our supervisory jurisdiction. We find no error in the trial court's application of La. C.C.P. art, 2124. Modjeski &Masters v. Carter, 485 U.S. 1031, 108 S. Ct. 1590 (1988) applies only to its unique facts and is distinguishable from those in the case at bar. We vacate our stay and grant relators 24 hours from the date and time of this order to post the requisite bonds.

New Orleans, Louisiana this 9th day of July, 2002, at 11:00 a.m.

JUDGE MAX N. TOBIAS, JR.

Jones, J. Concurs in the Result (see attached)
JUDGE CHARLES R. JONES

JUDGE MICHAEL E. KIRBY

NO. 2002-C-1306

COURT OF APPEAL
FOURTH CIRCUIT
STATE OF LOUISIANA

KATHY BROWNE, ET AL.

VERSUS

DEGUALLE MANOR, LTD., ET AL.

JONES, J. CONCURS IN THE RESULT

NO. 2002-C-1306

COURT OF APPEAL
FOURTH CIRCUIT
STATE OF LOUISIANA

KATHY BROWNE, ET AL.

VERSUS

DEGUALLE MANOR, LTD., ET AL.

(CDC# 99-18552)
DIVISION "A"

ORDER

IT IS ORDERED that this manner be stayed pending further orders of this court.

IT IS FURTHER ORDERED that the respondents file a written response to the relator's application for supervisory writ by 2:00 p.m. on Monday, July 8, 2002.

New Orleans, Louisiana this 3rd day of July, 2002.

JUDGE CHARLES R. JONES

JUDGE MICHAEL B. KIRBY

JUDGE MAX N. TOBIAS, JR.

CIVIL DISTRICT COURT FOR
THE PARISH OF ORLEANS
STATE OF LOUISIANA

NO. 99-18552 DIVISION "A"
c/w 99-19006
c/w 99-19398

KATHY BROWN, on behalf of her minor son,
RON BROWN

VERSUS

DEGAULLE MANOR, ET AL

FILED:
DEPUTY CLERK

JUDGMENT

This matter came for hearing on the Defendants' Motion for Suspensive Appeal to Limit Security on July 1,2002 at 10:00 a.m. Present were:

Tamara Kluger Jacobson
HARVEY, JACOBSON & GLAGO
A Professional Law Corporation
2609 Canal Street, 5th Floor
New Orleans, Louisiana 70119
Counsel for Plaintiffs, Kathy Brown and Ron Brown

Thomas McEachin
SCHONEKAS, WINSBERG,
EVANS & McGOEY, L.L.C.
400 Poydras Street, Suite 2040
New Orleans, Louisiana 70130
Counsel for Plaintiff, Tara Mosely

Greg Weiss
WEISS & EASON
1515 Poydras Street, Suite 1100
New Orleans, Louisiana 70112
Counsel for the defendants

Robert Kerrigan
Joseph L. McReynolds
DEUTSCH, KERRIGAN & STILES, L.L.P.
755 Magazine Street
New Orleans, Louisiana 70 130-3672
Counsel for the Defendants

Thomas W. Darling
WINDHORST, GAUDRY, RANDSON,
HIGGINS & GREMILLION
401 Whitney Avenue, Suite 500
Gretna, Louisiana 70056
Counsel for the Defendant,
Zurich American Insurance Company

Alter considering the pleadings, memoranda, exhibits and arguments of Counsel, this Court finds the following:

IT IS HEREBY ORDERED that the defendants' Motion for Suspensive Appeal is GRANTED provided that the parties comply with the requirements of posting a bond as set forth in La.C.C.P. 2124.

IT IS FURTHER HEREBY ORDERED that the Motion of the Defendants. William J. Crisler, Jr. and DeGaulle Manor, Ltd. to limit the amount of the required bond and all other relief as prayed for in their motion is DENIED.

New Orleans, Louisiana this 1st day of July 2002.
Judge

CIVIL DISTRICT COURT FOR THE
PARISH OF ORLEANS
STATE OF LOUISIANA

KATHY BROWN ET AL

VERSUS

DEGAULLE MANOR ET AL.

CASE NUMBER: 99-18552 DIVISION A
c/w 99-19006
c/w 99-19398

Transcript of the HEARING held in the above-captioned matter on Monday, July 1, 2002, before the Honorable Carolyn Gill-Jefferson, Judge Presiding.

APPEARANCES:

TAMARA JACOBSON, ESQ.
Representing the Plaintiff, KATHY BROWN ET AL.

THOMAS M. MCEACHIN, ESQ.
Representing 'the plaintiff, TARA MOSLEY ET AL.

GREGORY C. WEISS, ESQ
JOSEPH L. MCREYNOLDS, ESQ.
ROBERT E. KERRIGAN, ESQ.
Representing the Defendant, DEGAULLE MANOR ET AL.

THOMAS DARLING, ESQ.
Representing the Defendant, ZURICH AMERICAN INSURANCE COMPANY
REPORTED BY:

Eve S. Kazik, RMR

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PROCEEDINGS

Monday, July 1, 2002

THE COURT:
This is matter No. 99-18552, consolidated with 99-19006, consolidated with 99-19398, Kathy Brown versus DeGaulle Manor, Ltd. Counsel, please identify yourselves and your representation for the record.

MR. KERRIGAN:
I'm Bob Kerrigan on behalf of Mr. Crisler and DeGaulle Manor and Zurich.

MR. MCREYNOLDS:
Joe McReynolds, also for the same parties.

MR. WEISS:
Greg Weiss for the same parties.

MR. MCEACHIN:
Thomas McEachin on behalf of Tara Mosley.

MR. DARLING:
Thomas Darling on behalf of Zurich American Insurance Company. I have a motion to enroll as counsel of record,

THE COURT:
You are in on it?

MR. DARLING:
Yes.

MS. JACOBSON:
Tamara Jacobson, on behalf of the plaintiffs, Kathy Brown and her minor son, Ron Brown.

THE COURT:
Before the Court this morning is a Motion for Suspensive Appeal to Limit Security or Alternatively, Stay or Enjoin Judgment and/or for Expedited Hearing and Order.

Basically, as I understand from the pleadings that have been filed, the defendants are seeking to have this court either reduce the security or suspend the security during the period of suspensive appeal. And the plaintiff's position is that the Court does not have any authority to do that pursuant to civil Procedure, Article 2124.

I've read the memos. I know what they say. How do you all figure I'd get out of the "shall" language of 2124?

MR. MCREYNOLDS:
Due process grounds under the state and federal constitution, If an appellant is inpecunious and is unable to post a statutory required bond, and he would be forced into bankruptcy pending his right to have the judgment against him or in this case, excessive judgment against him – on review. And that's irreparable harm. it violates his due process rights, which Justice white of the Supreme Court held in the Modjeski & Masters case, a case that came out of the same court. That's the basis for it. It's a violation of due process and equal protection.

THE COURT:
The only thing I have here is self-serving affidavits that tell me you can't afford it. I don't have any financial documents or anything. All It says is that, We can't afford it; we are going bankrupt. And that DeGaulle Manor is out.

MR. WEISS:
I think he attached a financial statement.

MR. MCREYNOLDS:
I have the original of the affidavit that he signed.

MS. JACOBSON:
I have the copy.

MR. MCREYNOLDS:
It's an attachment to the original. I got it in the mail after I filed the motion. It lists his assets.

MR. MCEACHIN:
Do you have a copy of that, Joe?

MR. MCREYNOLDS:
I gave it to him.

MR. MCEACHIN:
I'll get Tamara's.

MR. MCREYNOLDS:
An affidavit was filed in the Modjeski & Masters case, and it was found to be sufficient by the Supreme court as proof of assets.

MR. WEISS:
Additionally, Judge, le me just say for the record that Mr. Crisler has been deployed by the United States

Army. I'm not exactly sure; I think he's in Germany. He has been officially -he has been deployed.

MS. JACOBSON:
When is that as of?

MR. WEISS:
On active duty.

MS. JACOBSON:
Because there were negotiations between the parties that we were going to take his deposition and that was going to happen either last week or this week. And now he has been deployed to Germany as of which day?

THE COURT:
I don't know anything about it.

MR. WEISS:
I'm just saying it for the record, Judge. That's the fact of the matter is, is that he's been deployed.

MS. JACOBSON:
Your Honor, on behalf of the plaintiffs, the problem with this affidavit and typed-up financial statement that hasn't been notarized or certified by any competent CPA or anything to that effect is that it is self-serving. And it's difficult for the parties in this matter to wholeheartedly rely upon the assertions of counsel for the reason that was just stated.

Again, we were in the middle of negotiations to take this gentleman's judgment debtor deposition which would have provided us, if not for this purpose, for at least the purposes of discussing settlement, more of a basis for believing what is being said. And suddenly he's in Germany.

MR. MCREYNOLDS:
Your Honor, we have posted a bond in the amount of Zurich's judgment liability. Now the policy limits plus accrued interest to date. if, as we believe, this judgment is reversed, at least as to the liability of Crisler, then it would certainly be a violation of his due process rights to force him into bankruptcy while waiting for the appellate court to review that judgment.

If it turns out that he's not liable or that the damage award is excessive, then he will have suffered the harm of a bankruptcy when, in all likelihood, he may not have any judgment liability whatsoever.

THE COURT:
So, why is he filing bankruptcy?

MR. MCREYNOLDS:
If they proceed, as they are indicating that they're going to do, with executing on this judgment for the excess amount over the amount of Zurich's liability and bond, he'll have no choice but to have to file for bankruptcy. He can't pay a million and a half dollar judgment.

MS. JACOBSON:
Your Honor, with regard to the claim that his due process rights have been violated, this gentleman was represented at a trial of this matter. Further, he was at the trial for a good portion of the beginning of the trial. And he was fully aware of the situation as it existed. He participated in the proceedings, and he knew what this trial was about. It's not as though we came down here and did a default judgment against him! and he had no opportunity to obtain counsel. If he wasn't informed by his counsel of the enormity of the damages that he was facing, it's certainly not the plaintiff's problem,

MR. WEISS:
Judge, I can assure you that Mr. Crisler, during the entire course of this litigation, was informed of all of the ramifications of this case, but he was also informed that we felt that he didn't do one single thing in terms of his - in terms of liability with respect to this case. I mean, the reason that I appreciate the reason that the Court let them in this case, as far as I'm aware, was because of this 1995 letter, that U.S. Elevator document, the one from Matthew Binder.

But it was clear and unmistakable in this record that two or three months later KONE, Montgomery required that they – that Crisler, Crisler's partnership perform $38,000 in repairs to that elevator, and they took over the contract. so for three years prior to this accident he was relying on the expertise of KONE Elevator. He was exonerated. I think when you look at the overall – the potential and even though I know this court, most respectfully, Judge, I know you disagree, but I think it's - you've got at least to concede that Mr. Crisler does have a good faith basis for extricating himself from suit on appeal. He – he – but to require him now while he's out serving his country, to force him into bankruptcy so that he does not get to suspensively appeal this judgment, I think violates his due process rights.

I think, you know, we are not talking about Zurich and DeGaulle Manor here. We are talking about William Crisler. And Crisler didn't hold this hoistway door for these kids to jump into it. I meant the evidence shows that Crisler didn't even receive the 1995 letter. But assume – even if he did, is a landowner entitled to rely on experts in the elevator maintenance industry to tell him when his elevators are dangerous? And the jury found that the elevator company was not negligent.

So here's Crisler. He has got a negative net worth. He's over serving his country. He wants to appeal this judgment. And he, at least, at the very, very, bare bones minimum, Judge, has got at minimum a good faith basis for going upstairs with this case.

MS. JACOBSON:
Your Honor, everything he just said explains to this court why we briefed in a memo that there was an outrageous conflict of interest in this case. There was no way for him to argue that Crisler can rely upon the expertise of the elevator company and yet also represent the elevator company as they did. Since Zurich chose to do that in this case, they should also choose to protect their insured who they now say is fighting for this country. Let them put up the bond. They are more than capable and more than solvent of getting -- and able to get a bond for this gentleman.

They decided that it was more important to protect the $10 million policy that was out there rather than their $1 million policy for Mr. Crisler. And as such at this point let them get him a bond. There are cases out there that say that the insurance company is responsible to their insured for more than the liability limits, not necessarily to pay them but in order to get them a bond for that matter.

We have cited the Bowen case which went through the language of if they have clean hands and such! As your Honor is aware from listening to the trial in this matter and from seeing our briefs, it's our position that Zurich does not have clean hands. And therefore, they should put up the bond for their insureds.

MR. MCREYNOLDS:
Your Honor, Zurich has – is facing a judgment liability of

its policy limits plus interest. NOW, It has an obligation to pay the premium of a bond, if Mr. Crisler can get one. But he can't get one. It has no obligation to increase its own judgment liability beyond its policy limits by signing onto a bond that, if the judgment is affirmed, it will then have to pay under a guarantee agreement.

That's what the Sowen case stands for. And the practical truth is that Mr. Crisler is unable to get a bond because he's got no assets with which to secure the bond. No surety company is going to come in for the price of a premium and buy over two and a half, three million dollars worth of judgment liability. It doesn't work that way. I can't speak to what happened at trial, but I don't see any indication that Zurich acted in bad faith in any way. It's putting up its bond for its judgment liability, we are willing to pay the premium of the bond, but Mr. Crisler can't obtain one.

And all we're asking is that the security be limited to the amount of Zurich's bond so that Mr. Crisler can pursue his constitutionally-guaranteed rights of appeal in this state and have his review without pushing him into bankruptcy.

THE COURT:
But isn't that provided for under the code articles with regard to devolutive appeal? I mean, he gets a right to an appeal. He may not get a right to a suspensive appeal, but he gets a right to an appeal.

MR. MCREYNOLDS
But I think that under the authority of Modjeski & Masters he has a right to get it suspended to prevent the harm that would happen by pushing him into bankruptcy. That's what that case was about.

MR. KERRIGAN:
We're just talking about suspending it, Judge. if we're wrong, they can execute a judgment later. He's talking about for the appeal process, Judge.

THE COURT:
I understand that, and that's the whole purpose of the suspensive appeal. The statute says that you are to secure the value of the judgment plus interest until the date that it's posted. That's what gives you the right – you're suggesting to me this morning somehow that Mr. Crisler's due process rights will be violated by the fact that if this Court orders a suspensive bond to go ahead pursuant to the statute. And I don't see how that happens.

MR. MCREYNOLDS:
Because if that's true, your Honor, then the only litigants who would have a right to have a suspensive appeal are those rich enough to secure a bond.

THE COURT:
That's not true. That's why you have a devolutive appeal. That's not true. You mean - -

MR. MCREYNOLDS;
No. A suspensive appeal.

THE COURT:
You said that – you said their right to an appeal.

MR. MCREYNOLDS:
I'm sorry. I meant, the only ones who would have a right to a suspensive appeal are those who are rich enough in order to buy a bond. Now that is unequal protection. Those are the arguments that were made and that were accepted and agreed to by the United States Supreme

Court

MS. JACOBSON:
It's also unequal protection if you're only requiring solvent or wealthy insureds to have to go get a bond. But folks who don't have means aren't required to get a bond. There is no case law out there except for this aberrant Modjeski & Masters case. It's unfair that wealthy debtors would have to go get a bond but poor debtors don't.

MR. MCEACHIN:
Your Honor, I disagree with what Mr. McReynolds says about the Modjeski case being decisive on that issue. They issued an interim order. And after that interim order was issued, the case was reversed on appeal The Supreme Court never got to the constitutionality of the statute. The statute has been on the books in one form or another for 190 years. It says you can't do this. And with all due respect, I don't think you can do it. The only way you can afford the defendants the relief they're asking for is to declare 2124 unconstitutional. I don't think your Honor can do that after 190 years.

THE COURT
But I can't do that.

MR. MCREYNOLDS:
Of course you can.

THE COURT:
I cannot do that without a hearing. If we are talking about our constitutionality of a statute – Mr. McReynolds, under the law of this state if you challenge the constitutionality of a statute, then the Attorney General of the state of Louisiana has to be notified, and he has to come in and defend it. I've done that.

I can't sit here today and say, all right, on the basis of what I have here is this statute is unconstitutional. That's what you're asking me to do, and I cannot do that.

MR. WEISS:
No.

MR. MCEACHIN:
Your Honor, there are Supreme Court decisions that uphold the language of the statute.

THE COURT:
But as I understand your argument to me this morning is that the reason why I have to limit the security being posted in this to Zurich's amount of the policy plus interest until it's posted is that Mr. Crisler's due process rights would be violated. And if I do that, then and you're asserting that this statute is unconstitutional because it violates his due process rights. Is that what you're telling me?

MR. MCREYNOLDS:
Let me restate what I'm saying. I'm saying that under the – on Modjeski & masters you have the authority and discretion, just as any court does, to take cognizance of the particular circumstances involved in a case and to protect a litigant's appeal rights, including suspensive appeal rights, to prevent irreparable harm in the form of bankruptcy by fashioning some other remedy more appropriate than the statutorily required security.

THE COURT:
And tell me how it's irreparable harm because we are talking about money here. The fact that it's going to be – he has a credit problem? Is that the irreparable harm? where is the irreparable harm?

MR. MCREYNOLDS:
The Supreme Court has held that forcing someone into bankruptcy and effectively forego their right of review, an appeal, is irreparable harm.

THE COURT:
To forego their rights of a suspensive appeal.

MR. MCREYNOLDS:
A suspensive appeal. That's exactly right. They are effectively without any remedy.

MR. WEISS:
That's what the case says.

MR. MCEACHIN:
Your Honor, I don't think that's what the case says. I read this case. This is a one-page memorandum opinion that applies to the facts of that case, that particular defendant and that particular case, and what their net worth was. Mr. McReynolds –

THE COURT:
The thing that disturbs me about that case is that I am sure that since this case has come out, that there have been other defendants or appellants -- I'll put it that way – who have been in the same position that Mr. Crisler has been in. But there has never been any other case since this. And this case was done –

MR. MCEACHIN:
This case hasn't been cited to once, your Honor.

MS. JACOBSON:
We were unable to find any case.

THE COURT;
This case came out in 1988. And that's why I'm suggesting to you that it's probably turned on the facts of that particular case because otherwise it hasn't been -- I'm sure there are other defendants who have been in the same position – appellants, rather, in that same situation.

MR. MCREYNOLDS:
Your Honor, we have made our argument. Zurich is certainly entitled to a suspensive appeal upon the posting of the bond.

THE COURT:
Certainly Zurich is both of them are entitled to – by law are required to post a bond in order to suspend the execution of that judgment. And that's what 2124 does.

In those instances – the legislature just amended this thing last year to afford certain defendants – I mean appellants – some remedies when the judgments are over and above a certain amount. And they took that into consideration. And they did not – because I got to use it the first time last year, around the same time last year, when I looked at that statute.

MR. WEISS:
See, Judge, the real harm here is that if this bond is not suspended for Mr. Crisler, Mr. Crisler is going to be forced into a bankruptcy situation. It's not going to get the money – he's not going to get the money ever to post this bond. No surety is going to come in and give Mr. Crisler a bond. He will not get a bond.

The only thing that's going to happen is they'll try to execute on the judgment. Okay. Forces him into bankruptcy. He'll have to seek the protection of the

bankruptcy court in order to perfect even a devolutive appeal.

So what happens later if Crisler is exonerated, if the appellate court decides he should have never been in this case? He has been forced into bankruptcy; he can't get credit for another seven years. It's, you know for a situation in which perhaps the appellate court, with all due respect, Judge, may have disagreed with the lower court as to whether he should have been in the first place.

THE COURT
It's their prerogative every day, Mr. Weiss.

MR. WEISS:
Why should he be hurt as a result of this judgment? Why should he be irreparably harmed in bankruptcy if ultimately he's exonerated? Why does he have to go through that, Judge? How is that –

MR. KERRIGAN:
Judge, your feelings are abundantly clear. Are you going to prepare a judgment?

THE COURT:
Well, it's not my feelings. It's what the law says. Look, Let me tell you something. I do this business based on the facts and the law. It doesn't have anything to do with feelings.

MR. KERRIGAN:
Judge. I misspoke. They get absolutely nothing if he takes bankruptcy. They get nothing. Everything will be discharged. We understand the track we're going through. Let's just go through it. Let's get a judgment signed and move on.

MR. DARLING:
I think the Court has discretion if you read 2124-B along with 2124-D. 2124-B says, "It shall set the bond." You know, shall be limited of the judgment plus the interest through the date of the setting of the bond.

Then you go to more specific 2124-D, where it says, "upon good cause shown, the Court may set a bond but no more than 150 percent." It doesn't say what a minimum should be in 2124-D. So if you read 2124-D and apply it to these facts, it gives the court discretion, less than the amount of the total judgment.

MS. JACOBSON:
And along those lines, your Honor, we would have no problem with your Honor setting the bond at 150 percent for Zurich and allow them to afford their insured some additional protection, if that's the case.

MR. DARLING:
There is no – Zurich's bond is what their policy limits are. It shouldn't be any greater because at the end of the day if a surety –

THE COURT:
I would agree with you on Zurich. Zurich is in on the extent of whatever its policy is.

MR. KERRIGAN:
That's exactly what the judgment says.

MR. MCEACHIN:
Your Honor, we would argue that there is due cause in this case for the same reason they are arguing that their defendant shouldn't be posting a bond. There is a chance that these guys are insolvent. If that's true, then our client is left hanging with no place to collect a

judgment.

MR. KERRIGAN:
Your clients are hung with the people you got a judgment against, counsel.

(off the record discussion.)

THE COURT:
Counsel made a statement about 2124-D.

MR. DARLING:
2124-D gives you discretion to limit the bond.

MR. MCEACHIN:
Asking the Court to raise the amount of the bond under 2124-D. We believe there is good cause here to have a bond in excess of 100 percent required, minimum required, and up to the 150 percent that's allowed by 2124-D.

MR. MCREYNOLDS:
Are you representing to the Court that you would accept a bond in the amount of 150 percent of the judgment?

MR. MCEACHIN:
We would accept a bond in the amount of 1.8 million for Zurich's suspensive appeal.

MR. DARLING:
That's greater than their policy limits.

MR. MCEACHIN:
They're asking you to do something that's not allowed by the statute. I'm asking you to do something that is allowed by the statute. It's in your discretion to do that. But it's not in your discretion to do what the defendants

have asked you to do.

MR. MCREYNOLDS:
Well, are you representing to the Court that you would accept security in the amount of 150 percent of the judgment as to all three defendants?

MS. JACOBSON:
That is in the Court's discretion. We are asking, and we set forth in our memo a little bit more extensive about the duty of Zurich and the reason that we believe good cause is being shown that there should be a bond of 150 percent in this matter.

MR. MCREYNOLDS:
As to all three defendants or simply –

MR. MCEACHIN:
As to Zurich only.

MR. MCREYNOLDS:
I think that would be completely unreasonable and unfair.

MR. DARLING:
The bond I have today is for the million dollar plus the interest, and that's the statutory required amount. We have it – a Motion and Order for Appeal is prepared.

MR. MCEACHIN:
Your Honor, that's the memo. As you know, 2124-D does allow you to go above 100 percent. And what – Tamara and I are arguing that that's the case here. There was good cause. If there is ever a case for good cause shown –

THE COURT:
You want them to go above their policy limits because they have got an insured who says he can't meet the bond.

MS. JACOBSON:
No, your Honor. That's not the reason. NO, that's not what I'm saying, and that's not what I briefed. Our position is that the statute provides that if good cause is shown that a party can be required to post up to 150 percent bond. That's under 2124-D.

Our position is that Zurich, their behavior in this case, as we have set forth in our memo, the inherent conflict in representing two parties and our lack of knowledge as to what was told to Mr. Crisler and his participation which would then be a departure from the ruling in the Bowen case. For those reasons we believe that Zurich should be required to put up the 150 percent bond.

As an example, and what we put forth in our brief, is that if it's found that Zurich was arbitrary and capricious in not settling this case with us, then it's possible they'll have to eat the entire $7 million of judgment in this case. And for those reasons we are asking that the court post the bond at 150 percent.

MR. DARLING
That's not the plaintiff's argument.

MS. JACOBSON:
That's exactly – I made the argument, and I wrote it.

MR. DARLING:
That's not the right party to make the argument. They don't have standing to claim bad faith. under 22 – 1220 only the insured.

MR. MCEACHIN:
We're saying there is a potential claim in the future, and that's –

THE COURT:
But the 1220 claim is left to the insured.

MR. MCEACHIN
Your Honor, that is not as outrageous as the defendants make it seem. That was the rule for 150 years.

THE COURT:
I know, until they changed it last year in June. I told you, I got the first crack at one, a discretion case. I understand.

MR. MCEACHIN:
The defendants have been posting 150 percent bond as long as the law has been around.

MR. DARLING:
What would happen, though, in this case, assuming the case is affirmed as it stands now, we won't be able to get a bond for 150 percent because who is going to write a bond saying. wait, Zurich, you're only liable right now for 1.2 million, and we are going to write a bond for 18 million. And then that $600,000 window is going to be collected upon because there is no one else to pay it because Zurich is only liable for their policy limits. So you're going to be going to a surety and saying, we want you to insure a $600,000 payment that if this judgment is affirmed, you're guaranteed to have to pay it. They won't do it.

MR. MCREYNOLDS:
They won't do that unless Zurich says -unless Zurich agrees to indemnify the surety company. And to order

that, then you're increasing Zurich's judgment liability, and that's not good cause. That's unfair.

MS. JACOBSON:
But the statute provides that you're entitled to – require them to post up to 150 percent bond. obviously, this is not a fluke. This happens, where the Court allows – rather, requires the parties to post up to 150 percent. In fact, it was the law until not that long ago.

MR. DARLING:
And there are cases where the judgment is well within policy limits. That's where the discretion comes in. But when you have a case that's in excess of policy limits, the discretion is that you can't post the bond. It's economically impossible to go get a surety when you're guaranteeing that surety will have to pay because our policy, limits are one million dollars.

MS. JACOBSON:
But you said you think this whole thing is going to get overturned on appeal.

MR. DARLING:
I didn't say that.

MS. JACOBSON:
Weli, that's the position of lead counsel.

THE COURT:
Let me tell you what my position is on this and what my understanding is of the law – and I know what the facts are in this case because I tried the case, and I have held numerous motions and stuff on it. So I'm clear as to what the facts are. The jury has entered a verdict in this case against the parties that they chose to do that against.

Now what I'm required here to do is in the instance of a motion for a request for a suspensive appeal is to make a determination about the bond. My reading of 2124 says that there shall be a posting of the bond in an amount of the judgment plus interest from the date of the posting.

As it relates to the defendant Crisler, I'm not going to order that he post – limit his security in this amount. It is my position and my understanding of the law that he has to follow 2124.

As to Zurich Insurance Company, I'm going to order that they follow 2124, and that they post a bond in the amount of the judgment plus interest from the date of the posting.

Prepare a judgment to that effect.

MR. MCEACHIN:
Your Honor, what about DeGaulle? You didn't address DeGaulle.

THE COURT:
DeGaulle has to post – it applies to DeGaulle and Crisler. Everybody has to follow 2124.

MS. JACOBSON:
I'll prepare a written judgment to that effect, your Honor.

MR. MCREYNOLDS;
Can we indicate for our – it will be on the minutes, the motion for suspensive appeal is granted conditioned upon the posting of the security as you just outlined?

THE COURT:
Yes.

MS. JACOBSON:
I'll prepare a judgment.

THE COURT:
And circulate it to all counsel.

MS. JACOBSON:
I will.

MR. KERRIGAN:
Judge, we need that signed today.

THE COURT:
I'll be here all day. Is yours ready now?

MR. DARLING:
Well, I'm going to wait. I want to see the judgment. I don't want to file an appeal until I see the judgment on the suspensive, what we just –

MS. JACOBSON:
I'm going to prepare it.

THE COURT:
I will be here all day; I'll be here tomorrow all day. So whenever you all get it in, I'll sign it.

MS. JACOBSON:
I will fax it to everybody.

THE COURT:
Wait. Before you all leave, wait. Wait. There is this other motion you all have got here, A Motion to Continue Hearing on Plaintiff's Motion for Sanctions. The

defendants have asked for a continuance on that until my next rule date. You all object to it? Everybody gets one.

MS. JACOBSON:
Your Honor, but the next rule date is September. That's the problem.

THE COURT:
I know. What's the problem? Sanctions – I mean, what is the – whether or not I impose sanctions is that going to bother somebody between now and then?

MS. JACOBSON
If your Honor wants to –

THE COURT:
I give everybody one. You all get one continuance. That's my policy. I give them one and whatever the first rule date – because I'm on vacation in August. That's probably why you can't get another one. It was left here last week, and that's why I'm addressing it now.

MS. JACOBSON:
Right. Move it to September?

THE COURT;
Yes. Because I'm on Vacation. It's set for September 6th. You all want new notices?

MS. JACOBSON:
No.

THE COURT:
I'm going to do it right now. I'm doing it right now. And Mr. Carter can give you all -that's the only reason it's put off is because I won't be here.

CIVIL DISTRICT COURT FOR THE
PARISH OF ORLEANS
STATE OF LOUISIANA

REPORTER'S CERTIFICATE

I, Eve S. Kazik, RPR, do hereby certify that:

I am an official court Reporter of the Civil District Court of the State of Louisiana, in and for the parish of Orleans, Louisiana, and that as such I reported in stenotype the proceedings had in the within-entitled matter at the time and place therein set forth, and that the same is a full, true, and correct transcription of said stenotype notes as taken by me in said matter to the best of my ability.

Eve S. Kazik, RPR
Official Court Reporter
License No. 87028

July 1, 2002

LA C.C.P. Art. 2124
LSA-C.C.P. Art. 2124

WEST'S LOUISIANA STATUTES ANNOTATED
LOUISIANA CODE OF CIVIL PROCEDURE ACTS 1960.
NO.15 BOOK III. PROCEEDINGS IN APPELLATE
COURTS TITLE I. APPELLATE PROCEDURE
CHAPTER 2. PROCEDURE FOR APPEALING

Current through all 2001 Regular and
Extraordinary Session Acts

Art. 2124. Security robe furnished for an appeal

A. No security is required for a devolutive appeal.

B. The security to be furnished for a suspensive appeal is determined in accordance with the following rules:

(1) When the judgment is for a sun' of money, the amount of the security shall be equal to the amount of the judgment, including the interest allowed by the judgment to the date the security is furnished, exclusive of the costs.

(a) However, in all cases, except litigation related to the Tobacco Master Settlement Agreement, or any litigation where the state is a judgment creditor? where the amount of the judgment exceeds one hundred fifty million dollars, the trial court, upon motion and after a hearing, may, in the exercise of its broad discretion, fix the security in an amount sufficient to protect the rights of the judgment creditor while at the same rime preserving the favored stems of appeals in Louisiana.

(b) The time for taking the suspensive appeal under Article 2123 shall be interrupted for judgments pursuant to Article 21 24(B)(1)(a) until the trial court fixes the amount of the security and commences anew on the date the security is fixed.

(2) When the judgment distributes a fund in custodia legis, only security sufficient to secure the payment of costs is required.

(3) In all other cases, the security shall be fixed by the trial court at an amount sufficient to assure the satisfaction of the judgment, together with damages for

the delay resulting from the suspension of the execution.

C. Where the party seeking to appeal from a judgment for a sum of money is aggrieved by the amount of the security fixed by the trial court, the party so aggrieved may seek supervisory writs to review the appropriateness of the determination of the trial court in fixing the security. The application for supervisory writ shall be heard by the court of appeal on a priority basis. The time for taking a suspensive appeal under Article 2123 shall be interrupted until the appellate court acts on the supervisory writs to review the determination of the trial court in fixing the security and commences anew on the date the action is taken.

D. For good cause shown, the trial judge in the case of the appeal of a money judgment to be secured by a surety bond may fix the amount of the security at an amount not to exceed one hundred fifty percent of the amount of the judgment, including the interest allowed by the judgment to the date the security is furnished, exclusive of the costs.

E. A suspensive appeal bond shall provide, in substance, that it is furnished as security that the appellant will prosecute his appeal, that any judgment against him will be paid or satisfied from the proceeds of the sale of his property, or that otherwise the surety is liable for the amount of the judgment.

CREDIT(S)

2002 Main Volume

Amended by Acts 1977, No. 176, 1, eff. Jan. 1, 1978; Acts 1988, No. 444, § 1, cf. Jan. 1, 1989; Acts 1989, No. 307, §

2; Acts 2001. No. 450, § 1, eff. June 19, 2001.

OFFICIAL REVISION COMMENTS–1960

2002 Main Volume

(a) This article establishes the formulae for determining the proper amount of bond required to suspend execution. Subparagraphs (I) and (2) of the second paragraph are taken directly from Art. 575 of the 1870 Code of Practice.

(b) Those portions of Art. 575 dealing with the technicalities of the bond filed, e.g., how it shall be payable, how tested, are not included in this Book. See nook IX, Title I, Chapter 3.

(c) Subparagraph (3) of the second paragraph is taken in principle from Fed. Rule 73(d). It is flexible in that it gives the court a wide discretion in fixing the bond in cases not involving a money judgment.

(d) Both Arts. 575 and 579 of the 1870 Code require that appeal bonds have sureties and that the sureties beheld under the terms of the bonds. See Book IX, Title I, Chapter 3.

(e) This article applies to bonds in injunction cases, where appeals from such are available. See Art. 3612, infra.

(f) Under the Louisiana jurisprudence, only a cost bond is required for a suspensive appeal from a judgment distributing a fund in custodia legis. Blanchin v. Steamer Fashion, 10 La.Ann. 345 (1855); State ex rel. Blocky. Rightor, 44 La.Ann. 564.10 So. 866 (1892): Metropolitan Bank v. Blaise, 109 La. 92, 33_So. 95(1902); Succession

of Jones. 189 La. 693. 180 So. 48.9 (1938); State ex rel. Messina v. Cage. 152 So. 399 (La.App. 1934). And, in such cases when the appellant has sued in forma pauperis where no cost bond is required, the suspensive appeal may be taken without furnishing any bond. Succession of Jones, supra; State ex rd. Messina v. Cage, supra. These tales of the jurisprudence are not changed by this Code.

(g) See, also, Comments under Arts. 2126, 2252, infra.

HISTORICAL AND STATUTORY NOTES

2002 Main Volume-

Source:

C.P. Arts. 575-578; Fed. Rule 73(d); cf. Comments preceding.

The 1977 amendment substituted "No security is required for a devolutive appeal." for the first paragraph and deleted a final paragraph. Prior to the 1977 amendment, the paragraphs had read:

"The security to be furnished for a devolutive appeal shall be fixed by the trial court at an amount sufficient to secure the payment of costs."

"Both devolutive and suspensive appeal bonds shall afford security for the payment of all appellate costs paid by the appellee, and all costs due by the appellant, including those due the clerk of the trial court for the preparation of the record on appeal."

Acts 1977, No. 176, § 4 provides as follows:

"Section 4. The effective date of this Act is January 1, 1978; the provisions hereof shall apply to all appeals in which the order of appeal is granted on or after the effective date hereof."

The 1988 amendment, in subpar. (B)(1) inserted "and a surety bond is furnished as security", substituted "be equal to" for "exceed by one-half', inserted "the" preceding "costs" and added " otherwise, the amount of the security shall exceed by one-half the amount of the judgment and interest as described in this Paragraph"; in subpar. (B)(2), substituted a period for ", and"; and inserted art unnumbered paragraph, following subpar. (B)(3), relating to good cause.

In this article as amended in 1988, paragraph designations A to D were made pursuant to the statutory revision authority of the Louisiana State Law Institute.

Section 2 of Acts 1988, No. 444 (§ I of which amends this article) provides:

"Section 2. This Act shall become effective January 1, 1989 and shall apply to cases in which an order of appeal is entered on or after that date."

The 1989 amendment rewrote subpar. (B)(1), which had read:

"(1) When the judgment is for a sum of money and a surety bond's furnished as security, the amount of the security shall be equal to the amount of the judgment, including the interest allowed by the judgment to the dare the security is furnished, exclusive of the costs;

otherwise, the amount of the security shall exceed by one-half the amount of the judgment and interest as described in this Paragraph."

Acts 2001, No. 450, § 1, added items (B)(1)(a) and (B)(1)(b) and par. C; and redesignated former pars. C and D as D and B respectively.

Prior Laws:
Acts 1876, No. 24.
Acts 1890 No. 45.
Acts 1926, No. 289.
Acts 1946, No. 74, § 2.

LSA-C.C.P. Art. 2124
LA C.C.P. Art. 2124

CIVIL DISTRICT COURT FOR THE
PARISH OF ORLEANS
STATE OF LOUISIANA

NO: 99-18552,99-19006, 99-19398 DIVISION: A

KATHY EROWNZ ET AL.

versus

DEGAULLE MANOR,, LTD., ET AL.

FILED: DEPUTY CLERK:

AFFIDAVIT OF NET WORTH

Before me, the undersigned Notary Public. personally came and appeared William J. Crisler, Jr., a person of the full age of majority, who after being duly sworn, did depose and state that,,

1. My name is William I. Crisler, Jr. I reside at 101 Cedar Cove in Clinton Mississippi. I make this Affidavit of my personal knowledge, and belief.

2. I have been personally cast in judgment in this case for $2,275,500.00, plus legal interest.

3. The following facts show I have insufficient assets to satisfy this judgment and insufficient assets to secure a bond necessary to suspend execution of the judgment pending an appeal.

4. I have two mortgages on my home, in the respective amounts of $ 154,347.16 and $63,262.00. My home has an estimated value of $245,000, with equity of $127,390. 84.

5. I have two credit cards, American Express and Master Card with balances totaling $8,823.33. I have two checking accounts, Trustmark account number 1003057714 with a balance of $1,943.62 and BancorpSouth account number 53093902 with a balance of $ 166.78.

6. I have a personal debt on a business loan in the amount of $ 46,590.78 with BancorpSouth. This debt is for S M Business Forms, Ltd, a printing distributor, of which I am 420% limited partner, but I am the maker of this note. The assets of the company that would be accountable to my 20% limited partnership interest amount to approximately $10,000.

7. I own shares of stock currently valued on the market at $_44, 178.35. The purchase of this stock was financed with a loan in the amount of $100,000 and there is $(55,821.65) in equity.

8. My most recent Federal Tax Returns show that I earned approximately $95,000 in 2000 and $116,000 in 2001,

9. I am insured under a general liability policy issued by Zurich American Insurance Company, Number ACO 8522074-3. This is the only liability policy that covers the liability of myself and DeGaulle Manor, Ltd. DeGaulle was also cast in judgment in this case, in the amount of $2,220,000.

10. I have a homeowners policy issued by State Farm, for approximately $249,920 in coverage, but that policy does not provide coverage for my judgment liability in this case. I have no umbrella coverage.

11. I own three automobiles that have a Kelly Blue book value of $31,885 with car loans totaling 18,435.12. There is a total equity in my automobiles of $13,449.88.

11. I have no other personal or business assets with which to satisfy the judgment and no assets to post as security for an appeal bond to satisfy any bonding company's indemnity requirements for furnishing an appeal bond. My personal net worth is $(25,934.86).

Signed this 25 day of June, 2002, in Clinton, Mississippi.

William J. Crisler, Jr.

Sworn to and subscribed before me this 25th day of June, 2002
Notary Public in and for the County of Hinds Mississippi.

NOTARY PUBLIC

Financial Statement of William J. Crisler, Jr.

ASSETS I

Cash	$2,110.40
Home	$245,000.00
Home Furnishings	$35,000.00 (this is a guess)

Stocks Owned (@ current value)	Value	# of shares	Current Price
Lucent	$4,840.00	2000	$2.42
Applied Micro Circuit	$4,520.00	1000	$4.52
Redback Networks	$1,580.00	1000	$1.58
Rambus	$3,221.50	850	$3.79
Star Media	$20.00	2000	$0.01
Cypress Semiconductor	$15,510.00	1000	$15.51
Coming	$3,900.00	1000	$3.90
Globspan Virata	$3,680.00	1000	$3.68
Ariba	$3,735.00	1500	$2.49
Yahoo	$2,262.00	150	$15.08
AGR.a	$18.90	10	$1.89
AGR.b	$488.40	264	$1.85
Avaya	$402.55	83	$4.85

3 Automobiles @ Kelly Blue Book Value	
97 Ford Explorer	$6,855.00
98 Olds 88	$9,545.00
99 Suburban	$15,485.00

20 % Limited Partner of SM Business Forms	$10,000.00
Total Assets	$368,173.75
LIABILITIES	
Home Mortgages	$217,609.16
Car Loans	$18,435.12
Credit Cards	
Am Ex	$7,873.17
MasterCard	$950.16
Stock Pledge Loans	$100,000.00
S M Business Forms Bank Debt	$48,000.00
Dentist Braces Debt	$1,250.00
Total	$394,117.61
NET WORTH	-$25,943.86

CIVIL DISTRICT COURT
STATE OF LOUISIANA

NO. 99-18552, 99-19006, 99-1 9398 DIVISION "A"

KATHY BROWNE, ET AL

VERSUS

DEGAULLE MANOR, LTD., ET AL

Telephonic deposition of WILLIAM J. CRISLER, JR., taken on Tuesday, July 2, 2002, at the Law Office of Deutsch, Kerrigan & Stiles, L.L.P., 755 Magazine Street, New Orleans, Louisiana, commencing at 3:45 p.m. and concluding at 4:55 p.m., C.S.T.

APPEARANCES

DEUTSCH, KERRIGAN & STILES, L.L.P.
BY: ROBERT E. KERRIGAN, JR., ESQ. JOSEPH E. LEE, ESQ.
755 Magazine Street
New Orleans, Louisiana 70130
ATTORNEYS FOR DEGAULLE MANOR, LTD., WILLIAM J. CRISLER, JR., AND ZURICH AMERICAN INSURANCE COMPANY

HARVEY, JACOBSON & GLAGO
BY: ROBERT G. HARVEY, ESQ. TAMARA KLUGER JACOBSON, ESQ.
2609 Canal Street
New Orleans, Louisiana 70119
ATTORNEYS FOR KATHY BROWNE

ON BEHALF or RON BROWNE
APPEARANCES CONTINUED:

TAGGART, MORTON, OGDEN, STAUB, ROUGELOT, BROCATO & O'BRIEN, L.L.C.
BY: JAMES R. MORTON, ESQ.
(Via telephone)
1100 Poydras Street
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New Orleans, Louisiana 70163 ATTORNEYS FOR MR. WILLIAM J. CRISLER, JR.

WEISS & EASON
BY: TERESE M. BENNETT, ESQ.
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New Orleans, Louisiana 70112 ATTORNEYS FOR DEGAULLE MANOR,
MR. WILLIAM J. CRISLER, JR.,
AND ZURICH AMERICAN INSURANCE COMPANY

Reported by: JoLyn A. Halley
Certified Court Reporter

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EXHIBITS

(None offered at this proceeding.)

STIPULATION

It is stipulated and agreed to by and between counsel for the parties hereto that the deposition of WILLIAM J. CRISLER, JR. is hereby being taken for all purposes, pursuant to the Louisiana Code of Civil Procedure and in accordance with law, pursuant to notice, on Tuesday, July 2, 2002, in the Law Office of Deutsch, Kerrigan & Stiles, 755 Magazine Street, New Orleans, Louisiana;

That the formalities of sealing, certification and filing are waived; that the formality of signing is not waived.

That all objections, save those as to the form of the question and responsiveness of the answers, are hereby reserved until the time as this deposition, or any part thereof may be used or sought to be used in evidence.

JOLYN A. MALLEY, Certified Court Reporter in and for the Parish of Orleans, State of Louisiana, officiated in administrating the oath to the above-named witness.

WILLIAM J. CRISLER, JR.,
101 Cedar Cove, Clinton? Mississippi, 39056, after having been duly sworn to tell the truth, the whole truth, and nothing but the truth, was hereby examined and testified as follows:

DIRECT EXAMINATION

BY MR. HARVEY:

Q. Mr. Crisler, how are you? This is Bob Harvey.

A. Hi, Mr. Harvey.

Q. How are you doing?

A. Fine. Before we begin, I wanted to tell you again how much I appreciated the courtesies that you extended me at our trial by allowing me to testify out of sync.

Q. I understand.

A. I wanted to tell you that again how much I appreciated that.

Q. No problem. No problem. Mr. Crisler, I'm putting on the Record that Mr. Winsberg is out of town, and he faxed a letter over and the gist is he couldn't be available today. And as I indicated before we got on the Record, numbers of people are out of town. So, what we'll do is we'll try to cover as much as we can, let him read the transcript, and hopefully you won't have to do this again. Okay?

A. Yes, sir.

Q. So, so it appears in the body of the deposition, why don't you repeat your full name and address.

A. My name is William J. Crisler, Jr., and I reside at 101 Cedar Cove, Clinton, Mississippi, 39056.

Q. And at that address, who lives with you?

A. My wife and four children.

Q. Before we go any further, Mr. Kerrigan has indicated that you're going to read and sign the deposition?

MR. KERRIGAN:
That is correct.

THE WITNESS:
Yes, sir.

BY MR. HARVEY CONTINUED:

Q. Now, you said your wife and four children?

A. Yes, sir.

Q. What is her name?

A. Eva, E-V-A.

Q. What was the last name?

A. Crisler.

Q. No. No. Was that a maiden name you gave me?

A. No, sir. That's her first name, Eva.

Q. What was her maiden name?

A. Krone, K-R-O-N-E.

Q. The home at 101 Cedar Cove, is that the only property that you own?

A. Yes, sir. And I own that, obviously, in joint tendency with my wife.

Q. I understand. And I've got your Affidavit, and I'll try not to repeat things in the Affidavit, just to clear them up. Okay. And, of course, that question was in your name. Now, do you own anything else, any other properties in anyone else's name?

MR. KERRIGAN:
Object to the form of the question. I don't understand the question.

BY MR. HARVEY CONTINUED:
Q. Well, I've noticed – I believe I remember correctly at trial you had a cousin that was in DeGaulle Manor with you?

A. Yes, sir. I heard – I don't know who was talking after you, but couldn't barely hear him so I just want to get clarified on that question. Do I own anything in anybody else's name?

MR. KERRIGAN:
Yes, that's the question I objected to.

BY MR. HARVEY CONTINUED:
Q. He objected to it, so let me clear it up.

A. Okay.

Q. Do you have an interest in any property that is not in your name by virtue of any agreements, counter letters, or any other legal documents, documents that you have in your safe; do you understand my question?

A. Mr. Harvey, I think I do, and I'll clear this up right now. I do not own any real property other than my house. To my knowledge, I am not involved in any transaction where I was an owner or am planning to be an owner. The only piece of property I currently own is my house. I don't have any documents in my safe suggesting that I'm an owner of anything else, no, sir.

Q. All right. Now, do you own any Corporations –

A. – no, sir.

Q. – that own any property?

A. I mean, I guess the stock that I listed is, I guess, part ownership of that corporation. But, no, sir, not besides what I have listed on the financial statement I sent with the Affidavit.

MR. KERRIGAN:
Let me – this is not an objection, but the question by counsel was do you Own any corporations, and let me clear that up. The question should be, do you own stock in any corporation?

MR. HARVEY:
Yes.

THE WITNESS:
My answer is going to stay the same, other than what I showed to you, and I presume, Mr. Harvey, you've got a copy of that.

BY MR. HARVEY CONTINUED:
Q. Yes.

A. That – you know, stock is partial ownership of a corporation but that is all, no, sir.

Q. And I got that. No, really what I was referring to is any small corporations, private corporations where you would be either the sole owner or partial owner of stock?

A. No, sir.

Q. Can you tell me I understand your personal

attorney is on the phone, Mr. James Morton?

A. Yes, sir.

Q. When did you – when did Mr. Morton first begin representing you in this matter?

MR. KERRIGAN:
I object to the form of the question. Go ahead and answer it.

THE WITNESS:
Okay. I called Mr. Morton probably sometime in the middle of June specifically to look at the LLC issue that arose during the trial. Mr. Morton has done commercial work for us when we owned DeGaulle, that's my relationship with him.

BY MR. HARVEY CONTINUED:
Q. Did you have a personal attorney that you were consulting with from the time this lawsuit was filed up until the time you hired Mr. Morton?

MR. KERRISAN:
You mean other than counsel of record?

THE WITNESS:
The attorneys that I consulted with were primarily Weiss & Eason, and they were provided by Zurich.

BY MR. HARVEY CONTINUED:
Q. Did at any time Weiss & Eason, Mr. Weiss or anyone with their firm, recommend that you seek the representation of a personal attorney?

MS. BENNETT:
I'm going to object to the form of the question, and I'm

going to object also on the basis of any comments that may have been given to Mr. Crisler based upon his previous answer would be protected under attorney/client privilege.

MR. KERRIGAN;
Terese, let me handle this. Number one, don't answer the question; number two, the question has nothing to do with your ability to respond to an adverse judgment; number three, any questions regarding legal representation or matters regarding your personal liability are covered by a privilege. Next question.

MR. HARVEY:
Let me just say for the Record that the issue that I am covering is covered by his ability to pay a judgment. In other words well, you know where I'm going, so it is something that I need for your appeal. So, if you're going to instruct him not to answer the question, I think we're going to need to get the Judge on the phone to get a clarification that I'm not limited just to assets.

MR. KERRIGAN:
My instruction to my client is he doesn't answer the question.

MR. HARVEY:
All right, then I think we – it's not going to benefit us –

MR. KERRIGAN:
– just hold it. Let's go through everything else you need and we'll take it at the end.

MR. HARVEY:
All right.

BY MR. HARVEY CONTINUED:

Q. Mr. Crisler, who was your accountant for the last five years?

A. Parker and Associates.

Q. And where are they located?

A. In Jackson, Mississippi.

Q. Have you given anyone, any institution a financial statement in the last two years?

A. Yes, sir. I think the last one I gave is two years old.

Q. You didn't send one of those with the documents that – excuse me a minute. You didn't furnish one of those with -other than – the financial statement that I see attached to your Affidavit, can you tell me who prepared that financial statement?

A. I did.

Q. You didn't go to Parker and Associates and have them prepare it?

A. No, sir.

Q. Would you willingly submit to us a copy of the last financial statement that was prepared by Parker and Associates?

MR. KERRIGAN:

Chris, I told counsel based on our conversation earlier that you would provide them with tax returns for the last five years, and those are the only documents that

you were going to furnish. Is that still your wish and inclination?

THE WITNESS;
That's really what I want to do, yeah.

BY MR. HARVEY CONTINUED:
Q. So, you won't voluntarily give us the last financial statement prepared by Parker and Associates?

A. Mr. Harvey, Parker and Associates has never prepared a financial statement for me.

Q. Two years ago – now, maybe I misunderstood you. I indicated when was the Last time you submitted a financial statement, and I don't know if I said prepared by Parker and Associates.

A. You did not.

Q. Okay. Has Parker and Associates ever prepared a financial statement for you?

A. No, sir.

Q. The financial statement that you prepared two years ago, who was that submitted to?

A. Generally, it's going to be submitted to the bank in relationship to the loan that we had with S.M. Business Forms.

Q. Has Parker and Associates ever assisted – so, he just assisted you in the preparation of a financial statement?

A. No, sir. I've never asked him to.

Q. Now, just so I'm clear, the financial statement we're talking about, the one you prepared two years ago, you will not voluntarily submit that to us with those tax returns?

MR. KERRIGAN:
I've not had a chance to look at it, so I would like Jim Morton to look at that and I would look at it before he says he's going to submit it.

MR. MORTON:
Right.

BY MR. HARVEY CONTINUED:
Q. Okay. Subject to a review by counsel if they're satisfied?

MR. HARVEY:
Is that all right?

THE WITNESS:
I'm sorry?

MR. HARVEY:
I'm asking Bob that. I just want to find out if we can get it through counsel.

MR. KERRIGAN:
I'll have to look at it, and if I think it's appropriate we'll send it over.

BY MR. HARVEY CONTINUED:
Q. Did you see the list of documents to be produced that was submitted to you -

A. – yes, sir.

Q. By Mark Winsberg?

A. Yes, sir.

Q. Have you attempted to accumulate any of these documents?

A. Some of the documents I do have readily available, some are not. Some I don't have at all. But if you would like to go down that list, we can certainly talk about it.

Q. I'm going to cover some of that list.

A. Okay, sir.

Q. I'd like to know, do you maintain personal bank accounts and bank accounts through your law office?

A. No, sir.

Q. Do you have a law practice?

A. Mr. Harvey?

Q. Yes, sir.

A. When you say "through my law office" – I have two bank accounts, and I do not have a legal bank account.

Q. They're both personal?

A. That's correct.

Q. How about S.M. Business Forms, Limited?

A. They have a bank account.

Q. Are you the signatory on that account?

A. I am.

Q. I'm sorry?

A. Yes.

Q. In what capacity?

A. I am a limited partner.

Q. And I'm not sure if I understood, your Affidavit says that you are a 20 percent limited partner?

A. Yes, sir. That's correct.

Q. Who are the other partners?

A. There is one other, Walter Moore.

Q. Has your interest in that particular company changed in the last year; do you understand my question?

A. I do. No, sir.

Q. Was it ever greater than 20 percent?

A. No, sir.

Q. So, waiter Moore is an 80 percent owner and you are a 20 percent?

A. Correct.

Q. On the note – "but I am the maker of this note," what note are you referring to?

A. That is the loan that S.M. Business Forms has with the bank to do business. The note is filed "William J. Crisler, Jr. doing business as S.M. Business Forms."

Q. Is Mr. Moore a signatory on the note?

A. He is not.

Q. Is the note for $46,590?

A. Yes, sir.

Q. What is the – the last financial statement for S.M. Business Forms, Limited, what does it show the net worth of the company?

A. I don't have it in front of me, but probably somewhere in the area of $15,000 to $16, 000.

Q. Does it do a volume of business per month; do you understand my question?

A. Exactly. And if you don't mind, I'll just explain to you how that works. For probably the last five or six years we have a group of set businesses that we call on, banks and a number of other people we do print jobs for. We had one large contract we've had for the last five years, and that contract was basically extremely large, like $200,000; and of that probably $60,000, $70,000 was profit. So, that basically put our income at about $100,000 to $110,000 a year, so that is how – we are – we do not have basically any assets other than receivables, because we're a distributor. And I'm not sure whether you know what that is or not in the printing business,

but we go out and get business and we send it off to other plants to produce and they ship direct to our customer.

Q. And am I correct, you said you had $100,000 in accounts receivables?

A. No, sir. No, sir. What that basically did – what I'm telling you is that one large contract is basically how we've been able to do the loan. We did not get the contract this year.

Q. Now, I remember from your testimony at trial you talked about tax sales, buying and selling?

A. Yes, sir.

Q. Tell me about – what do you do when you're involved in a tax sale? Who's buying at the tax sale?

A. The individual person or the company?

Q. Well, is there a company?

A. Yes, sir.

Q. What's the name of the company?

A. College Investment Company.

Q. You don't own any of that, do you?

A. I do not.

Q. That's the company I believe you testified you worked for?

A. I do. Yes, sir.

Q. And is that where the basic – the basis of your salary is derived from, the salary you listed on your net worth?

A. That and the print business. Well, they make up some of it, and obviously the Mississippi Air National Guard makes up some of it.

Q. Now, why don't you just kind of break your income down. You had $116,000 last year?

A. The investment company is about $50,000.

Q. I'm sorry. Someone coughed and the speaker is not that good. What was it?

A. The investment company would be about $50,000. The Mississippi Air National Guard or the Air Force, depending on whether I'm on active duty or not, it just fluctuates depending on, you know, how much active duty I do, it'll run anywhere from probably $17,000 to $28,000. S.M. Business Forms, when we were getting the large contract I'd normally net probably $15,000. And, I mean, that's the preponderance of my sources of income. In years past I have done pretty well in the stock market, and, you know, that was generally equivalent to $10,000 or $15,000, $20,000. But that's basically where I get my income from.

Q. Does the investment – the College Investment income, does that vary from year to year, or is that -

A. – you know, it just probably goes up with cost of living.

Q. You don't receive any type of commission or bonus on any sales that you –

A. – you know, there are occasion where we've gotten an extra paycheck, I mean if you want to call that a bonus. But I don't – I'm not on commission at all.

Q. What was your cousin's name, Lee Crisler?

A. Lee.

Q. Does he own any part of College Investment?

A. I believe he does. Yes, sir.

Q. How much –

A. – Mr. Harvey?

Q. Yes, sir.

A. I do not know whether he has given that stock away. I mean, I know that his father owns some and at one time I would presume that he did, but he has a lot of children as well and he very well may have given the stock to his children. I can't really answer that question. I don't know.

Q. Is College Investment incorporated?

A. Yes, sir.

Q. Does your wife own any stock in it?

A. No, sir.

Q. Any of your children?

A. Yes, sir.

Q. How much stock do your children own?

A. I think they have about a little over 500 shares.

Q. Out of how many?

A. Five thousand.

Q. Were any of those shares transferred in the last year?

A. No, sir.

Q. How long has College Investment, Incorporated been in existence?

A. I think since about 1947.

Q. Is that kind of a family-owned thing? I'm trying to recollect some of your testimony.

A. It was. It was started by my grandfather.

Q. How many brothers and sisters do you have, Mr. Crisler?

A. I have one brother and one sister.

Q. And your brother's name is?

A. Tommy.

Q. All right. Does Tommy Own any part of College Investment?

A. I do not know whether he does or not.

Q. Do you maintain some type of an office in the corporation?

A. You mean is my office

Q. – no. Are you an officer? I'm sorry.

A. I am the Treasurer, yes, sir, Secretary/Treasurer.

Q. Who is the President?

A. Julius.

Q. Crisler?

A. Yes.

Q. How are you related to Julius?

A. He is my father.

Q. Okay. And who is the Vice President?

A. There are two: Jim Crisler -

Q. Is that an uncle or cousin?

A. That's an uncle. – and Tommy Crisler, who is my brother.

Q. Do any of them work in the company as you do, buying and selling?

A. All of them.

Q. All of them.

A. Well, Mr. Harvey, everybody does something different, but they all work here, yes, sir.

Q. Is that a Subchapter S-type corporation?

A. No, sir.

Q. What was the total income of that corporation last year?

A. It lost $90,000.

Q. Nine?

A. Ninety.

Q. Did they own any property?

A. Oh, yes.

MR. KERRIGAN:
Who's "they"?

MR. HARVEY:
That's the corporation. He understood.

BY MR. HARVEY CONTINUED:
Q. You understood me, didn't you?

MR. KERRIGAN:
I need to understand.

MR. HARVEY:
All right.

BY MR. HARVEY CONTINUED;
Q. College Investment, they own property?

A. Yes, sir.

Q. Do they own any leases?

A. Mr. Harvey, I'm not aware of any leases.

Q. Can you just ballpark how much property College Investment, Incorporated owns?

A. I have no idea.

Q. Is it more than ten?

A. Ten pieces?

Q. Yes.

A. Yes, sir.

Q. Is it more than 100?

A. Yes, sir.

Q. It lost $90,000 last year. Was that due to depreciation; do you understand my question?

A. Well, obviously depreciation was part of it, yes, sir.

Q. All right. Do you have a total value for the property that's owned by College Investment?

A. I do not.

Q. Do they have annual board meetings?

A. Oh, they do. Yes, sir.

Q. Is the stock, the 500 shares, in all – excuse me, the names of your four children?

A. Yes, sir. Well, let me – in Mississippi a minor cannot hold it. It's in trust, and my wife is the trustee. And that was done three, four, or five years ago. I think the age is 25 when the disbursement will come for each of the children.

Q. Other than the $50,000 that you receive, do you receive any bonuses?

A. Mr. Harvey, I think I answered that question. On occasion we will get one extra paycheck, but not generally, no, sir.

Q. All right. Do your children receive any dividends from this?

A. No, sir. There's never been a dividend paid off the stock, to my knowledge.

Q. Can you tell me who are the two mortgages with on your home?

MR. KERRIGAN:
I'm going to object to the form of the question for the simple reason that he doesn't own an interest in the corporation. -

MR. HARVEY:
I'm asking on his home.

MR. KERRIGAN:
I apologize.

BY MR. HARVEY CONTINUED:

Q. My question was: Can you tell me who holds the mortgages on your home?

A. Absolutely. Chase Manhattan has one and my company, College Investment Company, has another.

Q. The one that College Investment has, is that the second mortgage or the first?

A. It is the second.

Q. I notice you have two credit cards: American Express and Master Card. Those two have a balance, and did I understand you right that the balance of those two cards is $8,823?

A. Yes, sir.

Q. Is that just for the month, or is that a balance that you pay out monthly?

A. That was the balance at the time that did that Affidavit. And, no, sir, I would not be paying that cut at the end of the month.

Q. Then you still have a balance similar to that amount?

A. At this time it's higher.

Q. Higher, okay. Do you have credit cards through your company?

A. No, sir.

Q. Are any of your cars furnished through your

company?

A. No, sir.

Q. Are the car loans through banks or through the manufacturers?

A. Through neither. College Investment Company has the car loan.

Q. All three of them?

A. Yes, sir. Actually, Mr. Harvey, there is a car loan on one car. The others I've paid off. The total value of the car loan is $18,000 and some change, $18,435.12. The other car loans I had, one was with – well, two were with the bank.

Q. Am I correct – well, maybe I'm not. Let me just ask the question: Other than the two credit cards and what's listed on your Affidavit of net worth, do you money to anyone else?

A. Yes, sir.

Q. And who would that be?

A. I did – per the Affidavit, I did a stock pledge agreement to buy the stack that I'm holding.

Q. When did you do that?

A. I don't have the exact date. I would say it was probably about 2 years ago, 2 1/2 years ago.

Q. I think you have that on here. You have that on here. I'm talking about anyone else –

A. – oh, I'm sorry.

Q. – that you owe money to that's not on the Affidavit of Net Worth.

A. I misunderstood you. I apologize. Mr. Harvey, not to my knowledge. If I do, they're not getting paid.

Q. Is there any – are any of the loans that you have, the amounts that you owe, are any of them insured, do you understand, against life insurance?

A. No, sir.

Q. you indicated in your Affidavit of Net Worth that you are insured under a general liability policy issued by Zurich, and you gave the number. Have you ever seen the policy?

A. I think I have once. Yes, sir.

Q. Who was your agent who sold you that policy?

A. Phillip Rutlidge, and he is with Arthur Gallagher, Arthur J. Gallagher.

Q. And are they in New Orleans?

A. I understand they have an office in New Orleans. His office is here in Jackson.

Q. Jackson?

A. Or Ridgeland.

Q. Did you know the amount of coverage you had on that policy when you purchased it?

A. Yes, sir.

Q. And you had no excess?

A. No, sir No excess or umbrella.

Q. Did you purchase that yourself, or did someone else purchase it?

A. Maybe I don't understand. I, myself did not, buy that policy. I am included on that policy. DeGaulle Manor, Limited purchased the policy.

Q. I understand. But did you negotiate the – in other words, did you go in for DeGaulle Manor to Arthur Gallagher and say, I want to purchase insurance for my company?

A. I probably, yes, sir, was involved in it. I would imagine there was some other people as well. But we had been with Arthur J. Gallagher for a number of years, so if you're referring to this specific policy certainly I had a part in it, yes, sir.

Q. Just so I know, who signs your paycheck with College Investment?

A. I do.

Q. Do you have any savings accounts?

A. I do not.

Q. Now, I believe we talked about a trust account, a trust, one that your wife has for the kids. How many trusts do you have?

A. Just that one.

Q. Is there anybody at – Phillip Rutlidge, is that – Arthur J. Gallagher, is there anyone else that you deal with there?

A. Depending on what the issue was. But as far as – I mean, Mr. Harvey, I'll be glad to tell you anything I know, but he's the primary agent. There's some other ladies when they would have a question would call me, but I don't even know whether they're still there or not. I know Phillip is still there.

Q. Are any of the properties owned by College Investment insured through Arthur Gallagher?

A. Not to my knowledge.

Q. And the only property that you had on this particular policy was the DeGaulle Manor property?

A. Right.

Q. Can you tell me which entity on that policy you fall under; do you understand my question? I never did find DeGaulle Manor in the policy.

MR. KERRIGAN:
Let me object to the form of the question. Unless you have sufficient expertise to answer an insurance coverage question, I specifically do not want you to guess. We have tried in several different forms, by letter, Affidavit, and like, to satisfy the answer to that question, and I do not believe that you are the right person who can answer that.

By MR. HARVEY CONTINUED:

Q. Can you tell me who set up the trust for your children?

A. I did.

Q. Who is the beneficiary?

A. My children. Mr. Harvey, let me make sure I understood what you were saying. I thought I had already explained that, but the beneficiary are my four children.

Q. Right. And your wife, she's the trustee?

A. She is.

Q. Anyone else?

A. No, sir.

Q. Do you vote the trust in any way?

A. Do I vote it?

Q. Yes.

A. What do you mean? I don't understand the question.

Q. You have any say-so in the trust?

A. I don't Arid I'll even tell you this, Mr. Harvey, one thing I did was should my wife die there is a successor trustee named, who is my sister; and should she die, as part of the trust instrument a court of competent jurisdiction must appoint the next trustee.

Q. Do you have any life insurance?

A. Yes, sir.

Q. Does it have any equity in it?

A. The preponderance of what I have, Mr. Harvey, are terra policies. I have one whole life policy. I'm not aware that it does, because anything – the cost of the insurance each year varies. I pay a set premium. And what I set up a couple of years ago was that if the cost two to three years ago the cost of life insurance basically went down, so it was probably spinning off cash value. And I asked the agent to basically turn the cash value into term policies each year, so it shouldn't. I don't know that it does. If it does, it's very little. But I will find that out for you and I will fax it to Mr. Kerrigan and get him to fax it to you.

Q. Is it all with the same company?

A. Oh, no, sir.

Q. How many policies?

A. There are two with American General. And this term policy they buy, I'm really not sure who that's with but they spin that off. Then the rest of the policies are primarily through the Air National Guard, I mean, they're SGLI, and there's now SGLI Plus, and there is the National Guard Association.

Q. Do you have any line of credits with any banks?

A. Yes, sir. That would be the S.M. Business Forms loan.

Q. You don't have any personal lines?

A. No, sir.

Q. Who is your primary bank? What is your primary bank, or who is your primary
bank?

A. Ban Corp South.

Q. Say that – it's Ban Corp?

A. Yes, sir. It's B-A-N, C-O-R-P, S-O-U-T-H.

Q. Is that – wait, that's B-A-N?

MS. BENNETT:
"V" as in Victor.

THE WITNESS:
No, sir, "B" as in Bravo.

MS. BENNETT:
Bravo, I'm sorry.

BY MR. HARVEY CONTINUED:
Q. Do you own any art?

A. No, sir, I don't.

Q. Who's your stockbroker?

A. One is E-Trade, so there's basically no broker involved there, The other is Round Hill Security, and that -the guy's name there is Mike Morgan.

Q. Are you on a margin account there?

A. No, sir.

Q. Have you attempted to obtain a bond for this judgment?

A. Yes, sir.

Q. Where did you attempt to get a bond?

A. I attempted it through my attorney. let's see, did you attempt through Mr. Kerrigan, through Mr. Weiss, through Mr. Morton?

MR. KERRIGAN:
Mr. McReynolds.

THE WITNESS:
Primarily at that point in time I guess we're talking about the Weiss & Eason firm, and basically Mr. Kerrigan.

BY MR. HARVEY CONTINUED:
Q. He's already answered it for me.

A. Are you talking to me, Mr. Harvey?

Q. Yes. Mr. Kerrigan just said Mr. McReynolds tried.

A. Okay.

Q. Did you personally try?

A. No, sir. I will tell you this: My brother also has an insurance license and we at one time had an insurance agency, and we discussed this at length and he said there was absolutely no possibility for me to get a bond.

Q. Did you try to get some type of bond through College Investment?

A. No, sir. I don't have any assets to put up for the bond. I'm just not aware of how I can get a bond, Mr. Harvey.

Q. Have you taken any steps to declare bankruptcy?

A. Would you describe more of what you mean?

MR. KERRIGAN:
I object to the form of the question. That issue is definitely premature at this point.

MR. HARVEY:
I realize that.

MR. KERRIGAN:
And there is no judgment that is seeking to be enforced against him at this time.

BY MR. RARVEY CONTINUED;
Q. Have you ever consulted with anyone to protect your assets?

MR. KERRIGAN:
Other than talking to Mr. Morton about the L.L.C. involved in the ownership of DeGaulle?

BY MR. HARVEY CONTINUED:
Q. Let's do it this way: Prior to the – just after the lawsuit was filed, when you were served the lawsuit, did you ever consult with anyone to protect your assets, about asset protection?

A. No, sir, not that I'm aware of.

Q. And I understand what's going on now, so I don't need to know that. What's the status of DeGaulle Manor at this time?

A. DeGaulle Manor, are you referring to the partnership or the apartment complex?

Q. It's limited liability.

MR. KERRIGAN:
The limited liability corporation?

BY MR. HARVEY CONTINUED:
Q. It owned the complex, didn't it?

A. No, sir.

Q. Oh, I remember now that it was a very complicated testimony.

MR. KERRIGAN:
Ask him to explain it.

BY MR. HARVEY CONTINUED:
Q. Why don't you go ahead and just explain it. I remember the L.L.C. owned the limited liability corporation, right?

MS. BENNETT:
I'm going to object to the form of the question. At this point I don't know which question he's being asked to answer.

MR. KERRIGAN:
That's fair. Why don't we, why don't we just get the question clearly on the table so that I can understand it.

BY MR. HARVEY CONTINUED;
Q. We have two companies. We have DeGaulle Manor, Limited, right?

A. Yes, sir.

Q. And we have DeGaulle Manor, L.L.C.?

A. Yes, sir.

Q. Now, as I understand it, correct me, DeGaulle Manor Limited, which owns the complex, is owned by the L.L.C. – I mean, right?

MR. KERRIGAN:
What?

BY MR. HARVEY CONTINUED:
Q. Isn't that right?

MR. KERRIGAN:
I don't understand that. Ask it again.

MR.. HARVEY:

I'm just going back to the testimony.

BY MR. HARVEY CONTINUED:
Q. Why don't you go ahead and explain it, Mr. Crisler, and then –

THE WITNESS:
–Mr. Kerrigan, if there's something objectionable that I say, just stop me, but let me just explain to you the ownership. DeGaulle Manor Limited is a Mississippi limited partnership. It owns DeGaulle Manor Apartment, DeGaulle Manor/Live Oaks Apartments. The general

partner of DeGaulle Manor Limited is DeGaulle Manor, L.L.C. That's the structure.

BY MR. HARVEY CONTINUED:

Q. I thought that was what I said. Anyway, what is the present status of the L.L.C. at this time?

A. It's still there.

Q. Does it have any assets?

A. No, sir.

Q. Was it ever – it has not been liquidated?

A. No, sir.

Q. Did it have any assets in 1999?

A. The assets of DeGaulle Manor, L.L.C. were the basically the assets of the two members of DeGaulle Manor, L.L.C., and that was their partnership – their ownership interest in the apartments.

Q. Okay. The apartments were sold, weren't they?

A. Yes, sir.

Q. When were they sold?

A. December 13th, I believe, 2000.

Q. Now, just so – for this Record, the only asset was the apartment complex; is that right?

A. That is absolutely correct. And, Mr. Harvey, let

me – you know, that is a very broad term when you say the "apartment complex." That represented everything when we sold it and all the personal property that was at the complex, all the tools, trade name. Everything associated with that apartment complex was what the assets of DeGaulle Manor, Limited were, and we sold every asset of the apartment complex.

Q. And I believe you testified at that trial it was something like $995,000?

A. Yes, sir. That's my recollection.

Q. Was there any money due – was there a mortgage on the property, the apartment complex?

A. Yes, sir.

Q. And what was the amount of the mortgage?

A. The first mortgage was about, I think $1,340,000.

Q. And what was the second mortgage?

A. There were – probably in the area of $2 Million.

Q. Was the $995,000 the excess to the mortgage? It was assume the mortgage and put up $995,000?

A. Mr. Harvey, I'm sorry. I didn't understand your question. Would you repeat it?

Q. According to what you just testified, there were – there was approximately $3.3 Million in mortgages on the property?

A. Right.

Q. Was that assumed by the purchaser and the cash put up was $995,000?

A. No, sir, not really. The – at the time of the sale basically what transpired, and I'm – this has been a while ago, but at the time of the sale there was a wrap mortgage put on for the purchaser that was short-term. The purchaser did not assume any of the debt, but he did not pay $995,000 in cash. So, basically what happened is at the time the mortgage ended, which I think was about five, six months after the consummation of the sale, the total amount we received was $995,000.

Q. And where did that money go?

A. To pay off the first mortgage.

Q. Who passed that Act of Sale?

A. DeGaulle Manor, L.L.C.

Q. No, what notary?

A. Jim Morton's law firm.

Q. Do you have any judgments against you now other than this one?

A. No, sir.

Q. Do you have any lawsuits against you now that have not gone to judgment?

A. No, sir, not that I'm aware of.

Q. Do you have a safety deposit box?

A. I do.

Q. In what bank is that located?

A. Pressmark (phonetic) National Bank.

Q. You listed stocks. Do you own any bonds?

A. I do not. No, sir.

Q. Do you have any purchase agreements that would – that the benefit of which would annue to you?

A. I do not. No, sir. And, Mr. Harvey, let me back up on that. When you say a "purchase agreement," would you -

Q. – I'm talking about on property.

A. You're talking about where I am involved in a purchase agreement?

Q. Where you would benefit from the purchase.

A. No, sir. I don't have any.

Q. Okay. The only questions I have left deal with what I don't think your attorneys are going to want to get into.

MR. HARVEY:
Bob, do you want to talk to -get a judge on the phone and see?

MR. KERRIGAN:
Your question, again, is what?

MR. HARVEY:
Well, my questions are now going to go to indemnity agreements with Zurich.

MR. KERRIGAN:
Ask him about an indemnity agreement with Zurich.

BY MR. HARVEY CONTINUED:
Q. Mr. Crisler?

A. Yes, sir.

Q. At any time, did you ever request or was there ever an indemnity agreement signed with Zurich in which they would indemnify you against any judgment?

A. Mr. Harvey, I'm not aware of signing anything with Zurich other than what's relevant to that Zurich American Insurance policy I put on my Affidavit of Net Worth. No, sir, I'm not aware of that.

Q. Well, let me put it this way just to be sure: At any time during the pendency of these proceedings, did someone from Zurich get you to sign a document, not the policy or not related to the policy but an agreement, to say, we're going to indemnify you individually against any judgment?

MR. KERRIGAN;
Within the terms of the policy, or any judgment?

MR. HARVEY:
Any judgment.

MR. KERRIGAN:
Object to the form of the question. Don't answer that, notwithstanding the fact that he's already said he's

signed nothing.

MR. HARVEY:
Well, he started referencing the policy, and I just wanted -

MR. KERRIGAN:
– his testimony is, A, he has not signed anything, and my objection had to go to other than whatever were the terms or conditions of the policy that he purchased from Zurich.

BY MR. HARVEY CONTINUED:
Q. Did you sign a formal conflict of – waiver of conflict?

MR. KERRIGAN:
Objection. Don't answer that question.

MR. HARVEY:
The rest of them – do you want to put them all down and then call?

MR. KERRIGAN:
Well, it seems to me, Bob, that now what you're going into is the manner of counsel's representation or any independent correspondence that he had with Zurich during the pendency of your case, all of which are his rights. And you may tend to believe that that somehow can be turned into an asset for the benefit of your clients; I personally fail to see how that could be. So, why don't we get on another phone, keep this line open, and who would you like to talk to?

MR. HARVEY:
I would like to talk to a Judge, I guess.

MR. KERRIGAN;
Which Judge?

THE WITNESS;
Mr. Kerrigan and Mr. Harvey, do you mind if we go off the Record for a minute?

(Off the Record.)

(Whereupon Judge Jefferson was called.)

JUDGE JEFFERSON:
I don't think that – there should not be any questions with regard to Mr. Crisler's conversations with his lawyers with regard to any subject matter. What he discusses with lawyers I believe is privileged information. I will permit any questions he asks with regard to whether or not there is an indemnity agreement between Mr. Crisler or any of the other defendants with regards to Jean Casler's judgment as regards to this trial. I will let the indemnity question be asked. If it's already been asked and answered, then that's the end of the discussion.

(Off the Record.)

MR. KERRIGAN:
For the Record, the Judge said that nothing that transpired between counsel during the counsel's representation of you during this trial is coming out in any way, shape, or fashion.

MS. JACOBSON:
At this time.

MR. KERRIGAN:
At this time, as Ms. Jacobson chimed in.

MR. HARVEY:
And I understand, for the Record, I will furnish those questions in a letter, you will review them, you'll tell me which ones you will answer or won't answer, if not all of them, one way or the other, and then we can take it back up with the Judge.

MR. KERRIGAN;
That sounds good.

MR. HARVEY:
Mr. Crisler, thank you.

MR. KERRIGAN:
We reserve our right to read and sign the deposition.

(Whereupon the deposition concluded.)

WITNESS CERTIFICATE

I, William J. Crisler, Jr., pursuant to the Rule 30(e) of the Federal Rules of Civil Procedure and/or Article 1445 of the Louisiana Code of Civil Procedure, have read or have had the foregoing testimony read to me and do hereby certify that the testimony is true and correct to the best of my ability and understanding.

I do hereby certify that I have not marked on, written on or in any way altered the foregoing transcript pages.

I do hereby tender to the Certified Court Reporter, the lawful officer before whom my sworn testimony was reported, transcribed, and thereafter certified, the foregoing transcript:

( )Without corrections

( )With corrections as reflected on the errata sheet(s) prepared by me and made a part hereof.

Dated
Signed:
William J. Crisler, Jr.

CERTIFICATE

This certificate is valid only for a transcript accompanied by my blue stamp on this page.

I, JoLyn A. Malley, Certified Court Reporter in and for the State of Louisiana, as the officer before whom this testimony was taken, do hereby certify that the foregoing 52 pages of court proceedings and/or testimony was reported by me in Stenomask and transcribed under my personal direction and supervision, and is a true and correct transcript to the best of my ability and understanding; that I am not of counsel, not related to counsel, nor to the parties hereto, and I am in no way interested in the outcome of this event.

JoLyn A. Malley
Certified Court Reporter